

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; to provide a continuing appropriation; 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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the office of the governor in section 3 of this Act as follows:

Salaries and wages	\$2,009,850
Operating expenses	265,736
Grants	760,000
Contingencies	10,000
Roughrider awards	10,800
Presidential electors	500
Governor's transition in	15,000
Governor's transition out	<u>40,000</u>
Total all funds - Base level	\$3,111,886
Less estimated income - Base level	<u>780,000</u>
Total general fund - Base level	\$2,331,886

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of the governor which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$256,471
Operating expenses	86,633
Grants	1,740,000
Presidential electors	(500)
Governor's transition in	(15,000)
Governor's transition out	<u>(40,000)</u>
Total all funds - Adjustments/enhancements	\$2,027,604
Less estimated income - Adjustments/enhancements	<u>1,780,000</u>
Total general fund - Adjustments/enhancements	\$247,604

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 office of the governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$2,266,321
Operating expenses	352,369
Grants	2,500,000
Contingencies	10,000
Roughrider awards	<u>10,800</u>
Total all funds	\$5,139,490
Less estimated income	<u>2,560,000</u>
Total general fund appropriation	\$2,579,490

SECTION 4. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. In addition to the amount appropriated to the governor's office in section 3 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. AMENDMENT. Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is eighty-five thousand five hundred six dollars through June 30, 2002, and eighty-seven thousand eight hundred two dollars through June 30, 2006, and ninety-two thousand four hundred eighty-three dollars thereafter.

SECTION 6. AMENDMENT. Section 54-08-03 of 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 sixty-six thousand three hundred eighty dollars through June 30, 2002, and sixty-seven thousand seven hundred eighty-three dollars through June 30, 2006, and seventy-one thousand seven hundred ninety-seven dollars thereafter.

Approved April 25, 2005
Filed April 26, 2005

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 office of the secretary of state and public printing; to provide an exemption; to define matching requirements for the Help America Vote Act; to amend and reenact sections 54-09-05 and 54-09-08 of the North Dakota Century Code, relating to the salary of the secretary of state and the secretary of state's general services operating fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the secretary of state in section 3 of this Act as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$2,153,618
Operating expenses	2,025,589
Petition review	8,000
Election reform	<u>9,500,000</u>
Total all funds - Base level	\$13,687,207
Less estimated income - Base level	<u>9,880,363</u>
Total general fund - Base level	\$3,806,844

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$336,000
Total general fund - Base level	\$336,000
Total general fund - Section 1	\$4,142,844
Total special funds - Section 1	\$9,880,363
Total all funds - Section 1	\$14,023,207

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the secretary of state which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$130,493
Operating expenses	50,472
Capital assets	15,000
Election reform	<u>79,728</u>
Total all funds - Adjustments/enhancements	\$275,693
Less estimated income - Adjustments/enhancements	<u>63,253</u>
Total general fund - Adjustments/enhancements	\$212,440

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	<u>(\$9,000)</u>
Total general fund - Adjustments/enhancements	<u>(\$9,000)</u>
Total general fund - Section 2	\$203,440
Total special funds - Section 2	\$63,253
Total all funds - Section 2	\$266,693

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$2,284,111
Operating expenses	2,076,061
Capital assets	15,000
Petition review	8,000
Election reform	<u>9,579,728</u>
Total all funds	\$13,962,900
Less estimated income	<u>9,943,616</u>
Total general fund appropriation	\$4,019,284

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	<u>\$327,000</u>
Total general fund appropriation	\$327,000
Grand total general fund appropriation - H.B. 1002	\$4,346,284
Grand total special funds appropriation - H.B. 1002	\$9,943,616
Grand total all funds appropriation - H.B. 1002	\$14,289,900

SECTION 4. COLLECTIONS FROM COUNTIES - GENERAL FUND REVENUE. The secretary of state shall collect \$76,100 from counties or make available \$76,100 from other sources, including savings from other areas within the secretary of state's budget to reimburse the general fund for a portion of the state matching requirement provided for federal election reform funds for the biennium beginning July 1, 2005, and ending June 30, 2007. All funds collected or made available by the secretary of state under this section must be deposited in the general fund or if made available from general fund budget savings of the secretary of state, be returned to the general fund as unspent general fund appropriation authority for the 2005-07 biennium.

SECTION 5. EXEMPTION. The appropriation contained in subdivision 1 of section 1 of chapter 2 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$105,000, and this amount may be used as state matching funds for federal election reform funding available to the state, for the biennium beginning July 1, 2005, and ending June 30, 2007.

¹ **SECTION 6. AMENDMENT.** Section 54-09-05 of 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 ~~sixty-four thousand seven hundred forty-two dollars through December 31, 2001, sixty-six thousand seven hundred eighty-four dollars through June 30, 2002~~ sixty-six thousand six hundred eighty-four dollars through June 30, 2006, and sixty-eight thousand eight hundred sixty-one dollars thereafter.

SECTION 7. AMENDMENT. Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

54-09-08. Secretary of state's general services operating fund. The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 54-09-10 and 54-09-11. At the close of each ~~fiscal year~~ biennium, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

SECTION 8. EMERGENCY. The election reform line item in subdivision 1 of section 3 and section 5 of this Act are declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

¹ Section 54-09-05 was also amended by section 18 of House Bill No. 1015, chapter 15.

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; to provide an appropriation for defraying the expenses of the racing commission; to provide an exemption; to provide for racing commission expenses; to provide a statement of legislative intent; to provide for duties of the attorney general; to provide for a salary equity review and recommendation; to amend and reenact subsection 1 of section 53-06.2-02 and section 54-12-11 of the North Dakota Century Code, relating to the membership of the racing commission and the salary of the attorney general; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the attorney general in section 3 of this Act as follows:

Salaries and wages	\$18,461,301
Operating expenses	7,995,471
Capital assets	1,830,250
Grants	5,891,560
Litigation fees	50,000
State school finance lawsuit	240,000
Arrest and return of fugitives	10,000
Gaming commission	5,109
Total all funds - Base level	\$34,483,691
Less estimated income - Base level	17,429,474
Total general fund - Base level	\$17,054,217

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the attorney general which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$926,395
Operating expenses	488,324
Capital assets	(44,200)
Grants	52,496
Gaming commission	(70)
Total all funds - Adjustments/enhancements	\$1,422,945
Less estimated income - Adjustments/enhancements	(515,729)
Total general fund - Adjustments/enhancements	\$1,938,674

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$19,387,696
Operating expenses	8,483,795
Capital assets	1,786,050
Grants	5,944,056
Litigation fees	50,000
State school finance lawsuit	240,000
Arrest and return of fugitives	10,000
Gaming commission	5,039
Total all funds	\$35,906,636
Less estimated income	16,913,745
Total general fund appropriation	\$18,992,891

SECTION 4. APPROPRIATION - RACING COMMISSION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the racing commission for the purpose of defraying the expenses of the racing commission, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Racing commission	\$367,145
Total all funds	\$367,145
Less estimated income	249,666
Total general fund appropriation	\$117,479

SECTION 5. SCHOOL FINANCE LAWSUIT. The state school finance lawsuit line item in section 3 of this Act is for the purpose of defraying the expenses of defending the state's school finance system for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND - LOCAL GAMING ENFORCEMENT GRANTS. The grants line item in section 3 of this Act includes \$617,000 for local gaming enforcement grants.

SECTION 7. FIRE AND TORNADO FUND - FEES. The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. Fees under this section may be collected in amounts of up to a total of \$310,000 for the biennium beginning July 1, 2005, and ending June 30, 2007. All fees collected under this section must be deposited in the attorney general's operating fund.

SECTION 8. PETROLEUM RELEASE COMPENSATION FUND - FEES. The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of \$35,000 for the biennium beginning July 1, 2005, and ending June 30, 2007. All fees collected under this section must be deposited in the attorney general's operating fund.

SECTION 9. ESTIMATED INCOME - RACING PROMOTION, PURSE, AND BREEDERS' FUNDS. Notwithstanding section 53-06.2-11, the estimated income line item in section 4 of this Act includes \$73,889 from the racing promotion fund, \$73,889 from the purse fund, and \$73,888 from the breeders' fund for the purpose of

defraying the administrative and operating costs of the racing commission for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 10. FEDERAL FUNDS - REDUCTION IN GENERAL FUND EXPENDITURES. If the attorney general receives federal funds that may be used to replace the reduction in federal Byrne grant funds for drug enforcement activities during the 2005-07 biennium, the attorney general may seek emergency commission approval to receive and spend the federal funds but may not spend moneys from the general fund added by the legislative assembly to the extent of the federal funds received for this purpose for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 11. ATTORNEY GENERAL REFUND FUND TRANSFER TO THE GENERAL FUND - EXCEPTION. Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2005.

SECTION 12. LEGISLATIVE INTENT - FUNDING PRIORITY. It is the intent of the fifty-ninth legislative assembly that the attorney general prioritize the attorney general's funding appropriated by the legislative assembly for the biennium beginning July 1, 2005, and ending June 30, 2007, to continue, to the extent possible, the drug enforcement activities that were previously paid for from federal Byrne grant funds.

SECTION 13. MEDICARE AND MEDICAID FRAUD ABUSE. The attorney general shall consider, in consultation with the United States department of justice, the feasibility of naming the state of North Dakota as a plaintiff in medicare and medicaid fraud abuse cases being considered by the United States department of justice for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 14. SALARY REVIEW AND RECOMMENDATION. During the 2005-06 interim, the director of the office of management and budget shall conduct an equity review of the salaries of all attorneys and paralegals employed as full-time employees with all branches of government within the state of North Dakota, including attorneys and paralegals employed by the state board of higher education and workforce safety and insurance. The director shall provide to the governor for inclusion in the 2007-09 biennial executive budget recommendation the funding necessary to adjust the salaries of attorneys and paralegals in a manner that makes attorney and paralegal salaries comparable and equitable throughout state government. In determining comparable positions based upon years of experience and importance of position, the director shall consult with the attorney general.

² SECTION 15. AMENDMENT. Subsection 1 of section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota racing commission is established in the office of the attorney general. The commission is subject to the supervision and direction of the attorney general, except with regard to the commission's authority to spend the funds described in subsection 6 of section 53-06.2-11. The attorney general may require payment for any services

² Section 53-06.2-02 was also amended by section 1 of Senate Bill No. 2340, chapter 467.

rendered to the racing commission. Payment for such services must be deposited into the attorney general's operating fund. The commission consists of the chairman and four other members appointed by the governor. Of the members appointed by the governor, one must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. 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 and may be reappointed. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

³ **SECTION 16. AMENDMENT.** Section 54-12-11 of 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 ~~seventy-one thousand seventy-two dollars through December 31, 2001, seventy-three thousand seven hundred two dollars through June 30, 2002, and seventy-four thousand six hundred eighty-four dollars thereafter.~~ seventy-six thousand two hundred nine dollars through June 30, 2006, and seventy-nine thousand six hundred ninety-four dollars thereafter.

SECTION 17. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

³ Section 54-12-11 was also amended by section 21 of House Bill No. 1015, chapter 15.

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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state auditor in section 3 of this Act as follows:

Salaries and wages	\$5,981,437
Operating expenses	<u>717,771</u>
Total all funds - Base level	\$6,699,208
Less estimated income - Base level	<u>2,117,976</u>
Total general fund - Base level	\$4,581,232

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state auditor which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$638,288
Operating expenses	158,524
Capital assets	<u>10,000</u>
Total all funds - Adjustments/enhancements	\$806,812
Less estimated income - Adjustments/enhancements	<u>299,791</u>
Total general fund - Adjustments/enhancements	\$507,021

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$6,619,725
Operating expenses	876,295
Capital assets	<u>10,000</u>
Total all funds	\$7,506,020
Less estimated income	<u>2,417,767</u>
Total general fund appropriation	\$5,088,253

SECTION 4. POLITICAL SUBDIVISION AUDIT FEES. Section 3 of this Act includes an appropriation of up to \$1,441,970 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 2005, and ending June 30, 2007. Any amount in excess of \$1,441,970 must be deposited

in the state auditor operating account and made available for appropriation after June 30, 2007.

⁴ **SECTION 5. AMENDMENT.** Section 54-10-10 of 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 ~~sixty-four~~ seventy thousand ~~seven~~ hundred ~~forty-two~~ fifty-nine dollars through ~~December 31, 2004~~ June 30, 2006, ~~sixty-six~~ sixty-one and ~~seventy-two~~ sixty-one thousand ~~six~~ sixty-one hundred ~~eighty-four~~ sixty-one dollars through ~~June 30, 2002~~, and ~~sixty-eight~~ sixty-one thousand ~~eighteen~~ sixty-one dollars thereafter.

Approved April 25, 2005

Filed April 26, 2005

⁴ Section 54-10-10 was also amended by section 19 of House Bill No. 1015, chapter 15.

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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state treasurer in section 3 of this Act as follows:

Salaries and wages	\$593,830
Operating expenses	122,554
In lieu of tax payments	<u>1,910,000</u>
Total general fund - Base level	\$2,626,384

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state treasurer which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$45,647
Operating expenses	32,233
In lieu of tax payments	<u>(365,000)</u>
Total general fund - Adjustments/enhancements	(\$287,120)

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 treasurer for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$639,477
Operating expenses	154,787
In lieu of tax payments	<u>1,545,000</u>
Total general fund appropriation	\$2,339,264

⁵ SECTION 4. AMENDMENT. Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

⁵ Section 54-11-13 was also amended by section 20 of House Bill No. 1015, chapter 15.

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~sixty-two thousand nine hundred seventy-four dollars through June 30, 2002, and sixty-four~~ sixty-six thousand two one hundred thirty-three ~~sixty~~ sixty dollars through June 30, 2006, and sixty-eight thousand eight hundred six dollars thereafter.

Approved April 8, 2005

Filed April 12, 2005

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 and for payment of state reimbursement under the homestead tax credit; to provide for a transfer; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the tax commissioner's salary; and to authorize the tax commissioner to enter into a financing agreement to establish an integrated tax system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state tax commissioner in section 3 of this Act as follows:

Salaries and wages	\$12,806,112
Operating expenses	4,438,627
Capital assets	25,000
Homestead tax credit	<u>4,000,000</u>
Total all funds	\$21,269,739
Less estimated income	<u>115,044</u>
Total general fund - Base level	\$21,154,695

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state tax commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$551,879
Operating expenses	<u>174,702</u>
Total all funds - Adjustments/enhancements	\$726,581
Less estimated income - Adjustments/enhancements	<u>4,956</u>
Total general fund - Adjustments/enhancements	\$721,625

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 tax commissioner for the purpose of defraying the expenses of the state tax commissioner and paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$13,357,991
Operating expenses	4,613,329
Capital assets	25,000
Homestead tax credit	<u>4,000,000</u>
Total all funds	\$21,996,320

Less estimated income	120,000
Total general fund appropriation	\$21,876,320

SECTION 4. TRANSFER. There is 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 \$1,400,000 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.

⁶ **SECTION 5. AMENDMENT.** Section 57-01-04 of the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~sixty-eight thousand two hundred seventy-seven dollars through December 31, 2001, seventy-two thousand seven hundred thirty-six dollars through June 30, 2002~~ seventy-six thousand three hundred seventy-four ~~thirty-six dollars through June 30, 2002~~ seventy-nine thousand eight hundred twenty-one ~~seventy-seven~~ seventy-seven dollars thereafter.

SECTION 6. FINANCING AGREEMENT AUTHORIZATION - APPROPRIATION. The state tax commissioner is authorized, with the advice of the chief information officer of the state, to purchase, finance the purchase, and lease equipment, software, and services, as may be determined necessary by the state tax commissioner, to establish an integrated tax processing system for use by the office of the state tax commissioner. The principal amount of any financing agreement entered into by the state tax commissioner may not exceed \$14,000,000 and the proceeds acquired from any financing agreement must be used for this stated purpose and are appropriated for the period beginning with the effective date of this Act and ending June 30, 2007. During the biennium beginning July 1, 2007, and ending June 30, 2009, the state tax commissioner shall commence repayment of any financing agreement entered into, and repayment amounts, including principal and interest, must be incorporated in the state tax commissioner's biennial budget requests to the legislative assembly.

Approved April 25, 2005

Filed April 26, 2005

⁶ Section 57-01-04 was also amended by section 24 of House Bill No. 1015, chapter 15.

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 labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the labor commissioner in section 3 of this Act as follows:

Salaries and wages	\$944,532
Operating expenses	<u>163,113</u>
Total all funds - Base level	\$1,107,645
Less estimated income - Base level	<u>229,698</u>
Total general fund - Base level	\$877,947

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the labor commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$182,031
Operating expenses	<u>161,230</u>
Total all funds - Adjustments/enhancements	\$343,261
Less estimated income - Adjustments/enhancements	<u>267,054</u>
Total general fund - Adjustments/enhancements	\$76,207

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 labor commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$1,126,563
Operating expenses	<u>324,343</u>
Total all funds	\$1,450,906
Less estimated income	<u>496,752</u>
Total general fund appropriation	\$954,154

Approved April 8, 2005

Filed April 12, 2005

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; to provide an appropriation for a rail rate complaint case; to amend and reenact section 49-01-05 of the North Dakota Century Code, relating to the salary of public service commissioners; to provide for a legislative council study; to provide an exemption to section 54-44.1-11 relating to unexpended appropriations; to provide legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the public service commission in section 3 of this Act as follows:

Salaries and wages	\$4,771,497
Operating expenses	1,197,261
Capital assets	35,011
Grants	62,000
Abandoned mined lands contractual services	3,668,492
Rail rate complaint case	<u>250,000</u>
Total all funds - Base level	\$9,984,261
Less estimated income - Base level	<u>6,072,767</u>
Total general fund - Base level	\$3,911,494

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the public service commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$307,491
Operating expenses	210,892
Capital assets	53,500
Grants	(55,000)
Rail rate complaint case	<u>695,000</u>
Total all funds - Adjustments/enhancements	\$1,211,883
Less estimated income - Adjustments/enhancements	<u>848,753</u>
Total general fund - Adjustments/enhancements	\$363,130

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 public service commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$5,078,988
Operating expenses	1,408,153
Capital assets	88,511
Grants	7,000
Abandoned mined lands contractual services	3,668,492
Rail rate complaint case	<u>945,000</u>
Total all funds	\$11,196,144
Less estimated income	<u>6,921,520</u>
Total general fund appropriation	\$4,274,624

SECTION 4. ESTIMATED INCOME - RAIL RATE COMPLAINT CASE. The estimated income line item appropriation in section 3 of this Act includes the sum of \$945,000, or so much of the sum as may be necessary, consisting of \$800,000 from the beginning farmer revolving loan fund, \$20,000 of carryover authority from the state rail fund, and \$125,000 from other sources, including the shipper participating in the case, to pay for the costs associated with the rail rate complaint case. The commission must have written commitments for \$125,000 from other sources, including the shipper participating in the case, before spending any moneys from the beginning farmer revolving loan fund.

7 SECTION 5. AMENDMENT. Section 49-01-05 of the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~sixty-six thousand five hundred nine dollars through December 31, 2001, sixty-eight thousand seven hundred four dollars through June 30, 2002, and sixty-nine thousand four hundred eighty-four dollars thereafter.~~ sixty-eight thousand seven hundred four dollars through June 30, 2002, and sixty-nine thousand four hundred eighty-four dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

SECTION 6. EXEMPTION. The amount appropriated for the rail rate complaint case, as contained in section 1 of chapter 29 of the 2003 Session Laws, is not subject to the provision of section 54-44.1-11. Any unexpended funds from the rail rate complaint case line item are available for continued use for expenditures relating to the rail rate complaint case.

SECTION 7. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES AND RESPONSIBILITIES. The legislative council shall consider studying, during the 2005-06 interim, the changes in responsibilities and duties of the public service commission since its inception. The study should include an evaluation of what additional duties have been given to the commission and those duties no longer performed. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 8. REPAYMENT OF FUNDING. The public service commission shall reimburse the beginning farmer revolving loan fund for any amounts available

⁷ Section 49-01-05 was also amended by section 16 of House Bill No. 1015, chapter 15.

from damages or proceeds received net of legal fees from a successful outcome of the rail rate complaint case.

SECTION 9. NORTH DAKOTA RAIL SYSTEM - LEGISLATIVE INTENT. It is the intent of the legislative assembly that a well-maintained, efficient, and fairly priced railroad transportation system in North Dakota is critical to the future of the North Dakota agriculture sector and the use of funds from the beginning farmer revolving loan fund for the rail rate complaint case will assist in achieving that objective.

SECTION 10. COMMISSION HEARING ROOM - LEGISLATIVE INTENT. It is the intent of the legislative assembly that the public service commission hearing room be available for use by other state agencies and by the legislative assembly during the regular session when not being used for commission business.

SECTION 11. EMERGENCY. The rail rate complaint case line item in section 3 of this Act is declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

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 amend and reenact sections 4-01-21, 4-22-22, 4-37-03, 4-37-04, and 19-18-04 of the North Dakota Century Code, relating to the salary of the agriculture commissioner, compensation of supervisors of soil conservation districts, the agriculture in the classroom program, and pesticide registration fees; to provide a contingent appropriation; to provide for a legislative council study; and to provide for transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the agriculture commissioner in section 3 of this Act as follows:

Salaries and wages	\$4,494,970
Operating expenses	3,359,825
Capital assets	8,000
Grants	100,000
Board of animal health	869,464
State meat inspection	763,461
Pride of Dakota	180,948
Wildlife services	800,000
Safe send	308,870
Noxious weeds	1,596,836
Crop harmonization board	25,000
Agriculture in the classroom	45,000
Total all funds - Base level	\$12,552,374
Less estimated income - Base level	8,318,849
Total general fund - Base level	\$4,233,525

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the agriculture commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,243,463
Operating expenses	896,050
Capital assets	(3,000)
Grants	1,674,225
Board of animal health	1,309,224
Contingent appropriation - wildlife services	130,000
State meat inspection	(763,461)
Pride of Dakota	(180,948)
Wildlife services	(800,000)
Safe send	(308,870)

Noxious weeds	(1,596,836)
Agriculture in the classroom	<u>(45,000)</u>
Total all funds - Adjustments/enhancements	\$1,554,847
Less estimated income - Adjustments/enhancements	<u>1,294,916</u>
Total general fund - Adjustments/enhancements	\$259,931

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$5,738,433
Operating expenses	4,255,875
Capital assets	5,000
Grants	1,774,225
Board of animal health	2,178,688
Contingent appropriation - wildlife services	130,000
Crop harmonization board	<u>25,000</u>
Total all funds	\$14,107,221
Less estimated income	<u>9,613,765</u>
Total general fund appropriation	\$4,493,456

SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 3 of this Act includes the sum of \$2,855,077, or so much of the sum as may be available, from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. ANHYDROUS AMMONIA STORAGE INSPECTION FUND. The estimated income line item in section 3 of this Act includes the sum of \$61,410, or so much of the sum as may be available, from the anhydrous ammonia storage inspection fund for the purpose of defraying the expenses of regulating anhydrous ammonia storage facilities, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 3 of this Act includes the sum of \$700,000, or so much of the sum as may be necessary, from the game and fish department operating fund for the purpose of defraying the expenses of various agriculture department programs for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. TRANSFER. The commissioner shall transfer \$200,000 from the environment and rangeland protection fund to the minor use pesticide fund.

SECTION 8. AMENDMENT. Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

⁸ Section 4-01-21 was also amended by section 10 of House Bill No. 1015, chapter 15.

4-01-21. Salary of agriculture commissioner. The annual salary of the agriculture commissioner is ~~sixty-six thousand five hundred nine dollars through December 31, 2001, sixty-eight thousand seven hundred one thousand five hundred four~~ seventy dollars through June 30, ~~2002~~ 2006, and ~~sixty-nine thousand eight hundred~~ seventy-four thousand forty-nine dollars thereafter.

SECTION 9. 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 before four p.m. on the tenth day following any general election a certified abstract of the votes cast in the county at the election for each candidate for district supervisor. 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 committee, fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the committee shall fill the vacancy; and in case the offices of all supervisors of a district become vacant, the 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 committee.

The supervisors of soil conservation districts are entitled to receive, upon a majority vote of the supervisors, up to ~~twenty-five~~ sixty-two dollars ~~and fifty cents~~ 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. The compensation and all other expenses including travel incurred by district supervisors while transacting district business must be paid from district funds.

SECTION 10. AMENDMENT. Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4-37-03. Purpose - Powers and duties. The agriculture in the classroom council ~~shall may~~ provide grants and ~~contracts to individuals and organizations that conduct~~ contract with any person for the provision of an agriculture in the classroom program ~~to develop, the development of~~ agricultural curriculum activities and ~~train~~ applicable to students from kindergarten through grade twelve, and the training of teachers in ~~these~~ agricultural curriculum activities ~~for grades kindergarten through twelve in this state's public school system.~~ The council shall work with ~~all educators, including teachers,~~ the superintendent of public instruction, the department of career and technical education, the United States department of agriculture, and the state agriculture commissioner in accomplishing ~~its~~ this purpose. The council ~~shall render services consistent with this purpose which include~~ may:

1. ~~Consultations~~ Consult with the state superintendent of public instruction, the department of career and technical education, the state agriculture commissioner, and the United States department of agriculture.
2. ~~Preparation of~~ Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.
3. Provide training programs for public school teachers in ~~developed~~ agricultural curriculum activities.
4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.
5. Monitor the quality and condition of the agriculture in the classroom program.

SECTION 11. AMENDMENT. Section 4-37-04 of the North Dakota Century Code is amended and reenacted as follows:

4-37-04. Gifts and grants. ~~In order to carry out its duties under this chapter,~~ The The agriculture in the classroom council may ~~contract for and accept and expend~~ private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. ~~Additional income must be spent~~ The council shall expend any moneys received under this section for the designated purpose designated, if any, in if a purpose is included as a condition of the gift, grant, or donation. The funds must be used to contract with individuals or organizations that conduct an agriculture in the classroom program council may use all other moneys received under this section to carry out the purposes of this chapter.

SECTION 12. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, 2005 2007) Registration - Fees.

1. 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:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product to be registered.
 - c. Be accompanied by a current label of each product to be registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be 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.
 - e. Be accompanied by a material safety data sheet for each product to be registered.
2. 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.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year 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. 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. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. 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.

(Effective July 1, 2005 2007) 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 to be registered.
3. Be accompanied by a current label of each product to be registered.
4. Be accompanied by a registration fee of three hundred dollars for each product to be 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 for each product to be registered.

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.

Each registration covers a designated two-year period beginning January first of each even-numbered year 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. 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. 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 13. CONTINGENT APPROPRIATION - WILDLIFE SERVICES.

The contingent appropriation - wildlife services contained in section 3 of this Act is a contingent appropriation out of any moneys in the game and fish fund, not otherwise appropriated, to the agriculture commissioner for the wildlife services program. This funding is in addition to the funding identified in section 6 of this Act. If the federal funding for the cooperative wildlife damage management program for North Dakota wildlife services for federal fiscal year 2006 is less than \$400,000, then \$65,000 of the appropriation is available for wildlife services programs and if the same federal funding is less than \$400,000 for federal fiscal year 2007, an additional \$65,000 of the appropriation is available for wildlife services programs.

SECTION 14. LEGISLATIVE COUNCIL STUDY - MEAT INSPECTION LICENSE FEES. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of implementing a license fee for businesses receiving state meat inspection program services and whether the fee would impact the number of businesses that would use the federal meat inspection service rather than the state service. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 25, 2005

Filed April 26, 2005

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; to provide for fund transfers; to provide for making payments of insurance premiums tax collections to fire departments; to provide for a legislative council study; and to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the commissioner's salary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the insurance commissioner in section 3 of this Act as follows:

Salaries and wages	\$4,698,378
Operating expenses	1,781,501
Capital assets	6,900
Pharmaceutical drug access program	100,000
Grants	<u>5,304,000</u>
Total all funds - Base level	\$11,890,779
Less estimated income - Base level	<u>11,790,779</u>
Total general fund - Base level	\$100,000

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the insurance commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$355,279
Operating expenses	381,876
Capital assets	(6,900)
Pharmaceutical drug access program	(100,000)
Grants	<u>1,116,000</u>
Total all funds - Adjustments/enhancements	\$1,746,255
Less estimated income - Adjustments/enhancements	<u>1,846,255</u>
Total general fund - Adjustments/enhancements	(\$100,000)

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 insurance commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$5,053,657
Operating expenses	2,163,377

Grants

6,420,000

Total special funds appropriation

\$13,637,034**SECTION 4. INSURANCE PREMIUMS TAX COLLECTIONS PAYMENTS.**

Section 3 of this Act includes the sum of \$6,420,000, or so much of the sum as may be necessary to the insurance commissioner, of which \$6,200,000 is for the purpose of making payments of insurance premiums tax collections to fire departments, \$120,000 is for the purpose of making two equal payments to the North Dakota firefighter's association, and \$100,000 is for the purpose of providing a grant to the North Dakota association of oil and gas producing counties for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. BONDING FUND.

Section 3 this Act includes the sum of \$35,000, 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, 2005, and ending June 30, 2007.

SECTION 6. FIRE AND TORNADO FUND.

Section 3 of this Act includes the sum of \$988,576, 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, 2005, and ending June 30, 2007.

SECTION 7. UNSATISFIED JUDGMENT FUND.

Section 3 of this Act includes the sum of \$35,000, 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, 2005, and ending June 30, 2007.

SECTION 8. PETROLEUM TANK RELEASE COMPENSATION FUND.

Section 3 of this Act includes the sum of \$120,000, 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, 2005, and ending June 30, 2007.

SECTION 9. ANHYDROUS AMMONIA STORAGE FACILITY INSPECTION

FUND. Section 3 of this Act includes the sum of \$150,000, or so much of the sum as may be necessary, from the anhydrous ammonia storage facility inspection fund to pay for anhydrous ammonia tank inspection costs for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 10. CRITICAL METHAMPHETAMINE-USE ZONE ADDITION.

Notwithstanding rules adopted by the commissioner identifying a critical methamphetamine-use zone, the commissioner shall designate the counties of Walsh, Cavalier, and Pembina as a critical methamphetamine-use zone subject to section 19-20.2-11 and rules adopted pursuant to that section. Section 3 of this Act includes the sum of \$50,000 from the insurance regulatory trust fund, or so much of the sum as is necessary, to implement security measures established by the commissioner, including the purchase and distribution of locking devices, in the counties of Walsh, Cavalier, and Pembina, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 11. LEGISLATIVE COUNCIL STUDY - HEALTH CARE AND HEALTH INSURANCE STUDY PROPOSAL.

During the 2005-06 interim, the legislative council shall consider studying the desirability of proposing a comprehensive health care and health insurance study to be performed during the 2007-08 interim. The 2005-06 interim study must include consideration of whether there is a need for a comprehensive, long-range study of the state's current and

future health care needs in order to address issues such as the aging population of the state, the phenomenon of health care cost-shifting to the private sector, the trend of uncompensated health care services, shortages in the number of health care professionals, duplication of technology and facilities, and any other factors that might affect the health care system in North Dakota in the year 2020. If the study results in a proposal for a comprehensive health care and health insurance study, the proposal must address the parameters of the proposed study and how the proposed study will be designed in order to allow for significant consumer input. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 12. LEGISLATIVE COUNCIL STUDY - ACCIDENT AND HEALTH INSURANCE LOSS RATIOS. During the 2005-06 interim, the legislative council shall study the appropriate minimum standard of loss ratio for accident and health insurers and whether that loss ratio is more appropriately set by statute or by rule. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

⁹ **SECTION 13. 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 ~~sixty-four thousand seven hundred forty-two dollars through December 31, 2004, sixty-six thousand seven hundred eighty-four~~ sixty-six thousand seven hundred eighty-four dollars through June 30, ~~2002~~ 2006, and ~~sixty-eight thousand eight hundred eighty-eight~~ sixty-eight thousand eight hundred eighty-eight dollars thereafter.

Approved April 25, 2005
Filed April 26, 2005

⁹ Section 26.1-01-09 was also amended by section 13 of House Bill No. 1015, chapter 15.

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 securities commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the securities commissioner in section 3 of this Act as follows:

Salaries and wages	\$925,523
Operating expenses	<u>466,222</u>
Total all funds - Base level	\$1,391,745
Less estimated income - Base level	<u>311,580</u>
Total general fund - Base level	\$1,080,165

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the securities commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$170,635
Operating expenses	<u>104,633</u>
Total all funds - Adjustments/enhancements	\$275,268
Less estimated income - Adjustments/enhancements	<u>(94,381)</u>
Total general fund - Adjustments/enhancements	\$369,649

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 securities commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$1,096,158
Operating expenses	<u>570,855</u>
Total all funds	\$1,667,013
Less estimated income	<u>217,199</u>
Total general fund appropriation	\$1,449,814

Approved April 25, 2005

Filed April 26, 2005

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 an exception; to provide for a legislative council study; to provide an appropriation to the state department of health; to provide for a transfer to the general fund; to provide for the transfer of appropriation authority; to create and enact a new section to chapter 25-18 of the North Dakota Century Code, relating to providing services to medically fragile children; to amend and reenact subsection 10 of section 54-44.8-01 of the North Dakota Century Code, relating to telecommunications equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of human services in section 3 of this Act as follows:

Subdivision 1.**MANAGEMENT**

Salaries and wages	\$11,016,285
Operating expenses	33,567,188
Capital assets	2,694
Developmentally disabled facility loan fund	<u>3,261,556</u>
Total all funds - Base level	\$47,847,723
Less estimated income - Base level	<u>34,130,107</u>
Total general fund - Base level	\$13,717,616

Subdivision 2.**PROGRAM AND POLICY**

Salaries and wages	\$22,053,781
Operating expenses	37,381,409
Capital assets	39,672
Grants	288,687,725
Grants - Medical assistance	<u>921,677,174</u>
Total all funds - Base level	\$1,269,839,761
Less estimated income - Base level	<u>959,092,082</u>
Total general fund - Base level	\$310,747,679

Subdivision 3.**MENTAL HEALTH COMMUNITY SERVICES CONTINGENCY**

Total general fund - Base level	\$250,000
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NORTHWEST HUMAN SERVICE CENTER

Total all funds - Base level	\$7,275,679
Less estimated income - Base level	<u>3,645,640</u>
Total general fund - Base level	\$3,630,039

NORTH CENTRAL HUMAN SERVICE CENTER

Total all funds - Base level	\$14,564,870
Less estimated income - Base level	<u>6,723,674</u>
Total general fund - Base level	\$7,841,196

LAKE REGION HUMAN SERVICE CENTER

Total all funds - Base level	\$8,420,933
Less estimated income - Base level	<u>3,782,973</u>
Total general fund - Base level	\$4,637,960

NORTHEAST HUMAN SERVICE CENTER

Total all funds - Base level	\$19,441,183
Less estimated income - Base level	<u>11,444,820</u>
Total general fund - Base level	\$7,996,363

SOUTHEAST HUMAN SERVICE CENTER

Total all funds - Base level	\$20,724,542
Less estimated income - Base level	<u>11,215,222</u>
Total general fund - Base level	\$9,509,320

SOUTH CENTRAL HUMAN SERVICE CENTER

Total all funds - Base level	\$11,358,975
Less estimated income - Base level	<u>5,731,868</u>
Total general fund - Base level	\$5,627,107

WEST CENTRAL HUMAN SERVICE CENTER

Total all funds - Base level	\$17,584,844
Less estimated income - Base level	<u>9,121,635</u>
Total general fund - Base level	\$8,463,209

BADLANDS HUMAN SERVICE CENTER

Total all funds - Base level	\$8,924,627
Less estimated income - Base level	<u>4,558,723</u>
Total general fund - Base level	\$4,365,904

STATE HOSPITAL

Total all funds - Base level	\$41,889,561
Less estimated income - Base level	<u>16,405,360</u>
Total general fund - Base level	\$25,484,201

DEVELOPMENTAL CENTER

Total all funds - Base level	\$40,761,057
Less estimated income - Base level	<u>31,949,828</u>
Total general fund - Base level	\$8,811,229
Total all funds - Subdivision 3	\$191,196,271
Total estimated income - Subdivision 3	\$104,579,743
Total general fund appropriation - Subdivision 3	\$86,616,528
Total general fund - Section 1	\$411,081,823
Total special funds - Section 1	\$1,097,801,932
Total all funds - Section 1	\$1,508,883,755

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of human services which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	(\$498,738)
Operating expenses	27,401,520
Capital assets	62
Developmentally disabled facility loan fund	(3,261,556)
Total all funds - Adjustments/enhancements	\$23,641,288
Less estimated income - Adjustments/enhancements	17,895,373
Total general fund - Adjustments/enhancements	\$5,745,915

Subdivision 2.

PROGRAM AND POLICY

Salaries and wages	\$670,847
Operating expenses	(104,195)
Capital assets	(5,808)
Grants	44,150,725
Grants - Medical assistance	84,529,164
Total all funds - Adjustments/enhancements	\$129,240,733
Less estimated income - Adjustments/enhancements	74,019,612
Total general fund - Adjustments/enhancements	\$55,221,121

Subdivision 3.

MENTAL HEALTH COMMUNITY SERVICES CONTINGENCY

Total general fund - Adjustments/enhancements	(\$250,000)
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NORTHWEST HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$37,052
Less estimated income - Adjustments/enhancements	35,963
Total general fund - Adjustments/enhancements	\$1,089

NORTH CENTRAL HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$698,351
Less estimated income - Adjustments/enhancements	526,839
Total general fund - Adjustments/enhancements	\$171,512

LAKE REGION HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$672,918
Less estimated income - Adjustments/enhancements	427,285
Total general fund - Adjustments/enhancements	\$245,633

NORTHEAST HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$1,037,049
Less estimated income - Adjustments/enhancements	734,210
Total general fund - Adjustments/enhancements	\$302,839

SOUTHEAST HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$2,779,416
Less estimated income - Adjustments/enhancements	2,417,169
Total general fund - Adjustments/enhancements	\$362,247

SOUTH CENTRAL HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$769,313
Less estimated income - Adjustments/enhancements	572,445
Total general fund - Adjustments/enhancements	\$196,868

WEST CENTRAL HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$905,199
Less estimated income - Adjustments/enhancements	<u>529,098</u>
Total general fund - Adjustments/enhancements	\$376,101

BADLANDS HUMAN SERVICE CENTER

Total all funds - Adjustments/enhancements	\$373,926
Less estimated income - Adjustments/enhancements	<u>245,520</u>
Total general fund - Adjustments/enhancements	\$128,406

STATE HOSPITAL

Traditional services	\$292,827
Secure services	<u>5,424,120</u>
Total all funds - Adjustments/enhancements	\$5,716,947
Less estimated income - Adjustments/enhancements	<u>(746,586)</u>
Total general fund - Adjustments/enhancements	\$6,463,533

DEVELOPMENTAL CENTER

Total all funds - Adjustments/enhancements	\$1,403,643
Less estimated income - Adjustments/enhancements	<u>(1,168,531)</u>
Total general fund - Adjustments/enhancements	\$2,572,174
Total all funds - Subdivision 3	\$14,143,814
Total estimated income - Subdivision 3	<u>\$3,573,412</u>
Total general fund appropriation - Subdivision 3	\$10,570,402
Total general fund - Section 2	\$71,537,438
Total special funds - Section 2	<u>\$95,488,397</u>
Total all funds - Section 2	\$167,025,835

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	\$10,517,547
Operating expenses	60,968,708
Capital assets	<u>2,756</u>
Total all funds	\$71,489,011
Less estimated income	<u>52,025,480</u>
Total general fund appropriation	\$19,463,531

Subdivision 2.

PROGRAM AND POLICY

Salaries and wages	\$22,724,628
Operating expenses	37,277,214
Capital assets	33,864
Grants	332,838,450
Grants - Medical assistance	<u>1,006,206,338</u>
Total all funds	\$1,399,080,494
Less estimated income	<u>1,033,111,694</u>
Total general fund appropriation	\$365,968,800

Subdivision 3.

NORTHWEST HUMAN SERVICE CENTER

Total all funds	\$7,312,731
Less estimated income	<u>3,681,603</u>
Total general fund appropriation	\$3,631,128

NORTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$15,263,221
Less estimated income	<u>7,250,513</u>
Total general fund appropriation	\$8,012,708

LAKE REGION HUMAN SERVICE CENTER

Total all funds	\$9,093,851
Less estimated income	<u>4,210,258</u>
Total general fund appropriation	\$4,883,593

NORTHEAST HUMAN SERVICE CENTER

Total all funds	\$20,478,232
Less estimated income	<u>12,179,030</u>
Total general fund appropriation	\$8,299,202

SOUTHEAST HUMAN SERVICE CENTER

Total all funds	\$23,503,958
Less estimated income	<u>13,632,391</u>
Total general fund appropriation	\$9,871,567

SOUTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$12,128,288
Less estimated income	<u>6,304,313</u>
Total general fund appropriation	\$5,823,975

WEST CENTRAL HUMAN SERVICE CENTER

Total all funds	\$18,490,043
Less estimated income	<u>9,650,733</u>
Total general fund appropriation	\$8,839,310

BADLANDS HUMAN SERVICE CENTER

Total all funds	\$9,298,553
Less estimated income	<u>4,804,243</u>
Total general fund appropriation	\$4,494,310

STATE HOSPITAL

Traditional services	\$42,182,388
Secure services	<u>5,424,120</u>
Total all funds	\$47,606,508
Less estimated income	<u>15,658,774</u>
Total general fund appropriation	\$31,947,734

DEVELOPMENTAL CENTER

Total all funds	\$42,164,700
Less estimated income	<u>30,781,297</u>
Total general fund appropriation	\$11,383,403
Total all funds - Subdivision 3	\$205,340,085
Total estimated income - Subdivision 3	<u>\$108,153,155</u>
Total general fund appropriation - Subdivision 3	\$97,186,930
Grand total general fund appropriation - H.B. 1012	\$482,619,261

Grand total special funds appropriation - H.B. 1012	\$1,193,290,329
Grand total all funds appropriation - H.B. 1012	\$1,675,909,590

SECTION 4. FULL-TIME EQUIVALENT EMPLOYEES - MEDICAID - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Subject to emergency commission and budget section approval, the department of human services may hire additional full-time equivalent positions for medicaid program review of eligibility and payments in addition to those authorized by the legislative assembly when it is cost-effective to hire additional positions in lieu of contracts or if no acceptable contract proposal is received within the funding constraints.

SECTION 5. MEDICAID ELIGIBILITY REVIEWS - CONTINGENT FUNDING. The appropriation in subdivision 2 of section 3 of this Act includes \$615,000 from the general fund and \$615,000 of federal funds for payment error rate measurement eligibility reviews for the medical assistance program. If the department of human services is not required by the federal government to conduct these reviews, the department may not spend these funds for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION. Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 3 of this Act and between subdivisions within section 3 of this Act for the biennium beginning July 1, 2005, and ending June 30, 2007. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2006, any transfers made in excess of \$50,000 and to the appropriations committees of the sixtieth legislative assembly regarding any transfers made pursuant to this section.

SECTION 7. ESTIMATED INCOME - LIMIT - COMMUNITY HEALTH TRUST FUND. The estimated income line item in subdivision 2 of section 3 of this Act includes \$254,356 from the community health trust fund. The department of human services expenditures from this fund may not exceed this amount for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. ESTIMATED INCOME - LIMIT - PERMANENT OIL TAX TRUST FUND. Notwithstanding section 57-51.1-07.2, the estimated income line item in subdivision 1 of section 3 of this Act includes \$3,667,820 from the permanent oil tax trust fund. The department of human services expenditures from this fund may not exceed this amount for the period beginning with the effective date of this Act, and ending June 30, 2007.

SECTION 9. COMPULSIVE GAMBLING PREVENTION AND TREATMENT FUND - TRANSFER TO THE GENERAL FUND. On July 1, 2005, the director of the office of management and budget and the state treasurer shall transfer \$100,000 from the compulsive gambling prevention and treatment fund to the general fund.

SECTION 10. FUNDING FOR CORPORATE GUARDIANSHIP PETITIONING COSTS. The department of human services may spend up to \$30,000 of the funds appropriated in the operating expenses line item in subdivision 2 of section 3 of this Act for paying petitioning costs for indigent individuals with developmental disabilities who have been referred for corporate guardianship for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 11. FEDERAL MEDICAL ASSISTANCE PERCENTAGE CHANGES - DEPARTMENT OF HUMAN SERVICES PROGRAM REVIEW -

LEGISLATIVE COUNCIL REPORT. During the 2005-06 interim, the department of human services shall determine the fiscal effect of anticipated changes in the federal medical assistance percentage for North Dakota for federal fiscal years 2007 and 2008. The department, with input from service providers, shall review its budget and programs and services to determine the extent to which the department can provide for additional general fund requirements resulting from federal matching changes without affecting the level of services provided by the department. If the department determines that programs and services will be affected, the department, with input from service providers, shall identify programs and services to reduce or discontinue to maintain its general fund budget within the funding level approved by the 2005 legislative assembly. By July 1, 2006, the department shall report to the legislative council regarding its budget and program review and its suggestions for programs and services to reduce or discontinue, including any legislation necessary to make the suggested changes. The legislative council shall receive the department's report and report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 12. LEGISLATIVE COUNCIL STUDY - QUALIFIED SERVICE PROVIDER PAYMENT SYSTEM. The legislative council shall consider studying, during the 2005-06 interim, the department of human services system of paying qualified service providers. The study must include a review of the appropriateness of payment levels to various providers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 13. APPROPRIATION - STATE DEPARTMENT OF HEALTH. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$30,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing a grant for suicide prevention programs on the Standing Rock Indian Reservation for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 14. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE. During the 2005-06 interim, the legislative council shall consider studying, with input from representatives of the department of human services and the long-term care industry, methods of improving the sustainability of funding long-term care services in the state, including a review of case mix and rate equalization, consideration of additional support for facilities providing additional restorative care services, and consideration of options for reducing the number of required reports of facilities providing high-quality care or for seeking waivers to change the survey process. The study, if conducted, must also include, with input from representatives of the department of human services, the long-term care industry, and the federal centers for medicare and medicaid services, the possibility of accessing additional federal funding through the intergovernmental transfer process. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 15. LEGISLATIVE COUNCIL STUDY - RESIDENTIAL TREATMENT CENTER AND RESIDENTIAL CHILD CARE FACILITY PAYMENT SYSTEMS. The legislative council shall consider studying, during the 2005-06 interim, the services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for these services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 16. PLAN TO TRANSFER APPROPRIATE DEVELOPMENTAL CENTER RESIDENTS TO COMMUNITIES - LEGISLATIVE COUNCIL REPORT.

The department of human services, with input from developmental disabilities services providers, shall develop, during the 2005-06 interim, a plan to transfer appropriate individuals from the developmental center to community placements and begin the transfers during the 2005-07 biennium. The department shall report to the legislative council on its plan and on the anticipated number of individuals that will be transferred during the 2005-07 biennium.

SECTION 17. DEPARTMENT OF HUMAN SERVICES AND INDIAN AFFAIRS COMMISSION - CHILD SUPPORT - STATE AND TRIBAL COURT COORDINATION.

The department of human services and the indian affairs commission shall collaborate to facilitate the coordination of state and tribal court activities to increase the amount of child support collected for noncustodial parents for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 18. A new section to chapter 25-18 of the North Dakota Century Code is created and enacted as follows:

Payment for services to medically fragile children. The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty-one years of age, and the actual and reasonable cost of providing services to developmentally disabled individuals when reimbursing an intermediate care facility for the mentally retarded.

SECTION 19. AMENDMENT. Subsection 10 of section 54-44.8-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Specialized telecommunications equipment" means a dedicated telecommunications device that, when connected to a telephone, enables or assists a person who is communications impaired to communicate with another person utilizing the telephone network. The term may include telecommunications devices for the deaf, amplifiers, and signaling devices. Specialized telecommunications equipment provided under this chapter to an individual may not exceed two thousand dollars in total cost per device.

SECTION 20. EMERGENCY. The appropriation of \$29,188,859 included in subdivision 1 of section 3 of this Act for the medicaid management information system replacement project and section 19 of this Act are declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

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, North Dakota vision services - school for the blind, and the state library; to provide an appropriation to the division of independent study; to provide for the distribution of special education payments; to provide for a legislative council study; to provide a statement of legislative intent; to amend and reenact section 15.1-02-02 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library in section 3 of this Act as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$9,277,686
Operating expenses	13,057,823
Capital assets	15,000
Grants - State school aid	489,379,990
Grants - Tuition apportionment	69,495,371
Grants - Special education	49,898,695
Grants - Revenue supplement	5,000,000
Grants - Teacher compensation	51,854,000
Grants - Other grants	182,255,244
Reorganization bonuses	500,000
Data envelopment analysis	50,000
Total all funds - Base level	\$870,783,809
Less estimated income - Base level	266,058,803
Total general fund - Base level	\$604,725,006

Subdivision 2.

STATE LIBRARY

Salaries and wages	\$2,078,571
Operating expenses	1,181,647
Grants	1,396,807
Total all funds - Base level	\$4,657,025
Less estimated income - Base level	1,629,979
Total general fund - Base level	\$3,027,046

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	\$4,809,808
Operating expenses	1,102,160

Capital assets	<u>32,723</u>
Total all funds - Base level	\$5,944,691
Less estimated income - Base level	<u>871,449</u>
Total general fund - Base level	\$5,073,242

Subdivision 4.

VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$2,540,292
Operating expenses	698,683
Capital assets	<u>18,233</u>
Total all funds - Base level	\$3,257,208
Less estimated income - Base level	<u>1,167,383</u>
Total general fund - Base level	\$2,089,825
Total general fund - Section 1	\$614,915,119
Total special funds - Section 1	\$269,727,614
Total all funds - Section 1	\$884,642,733

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS

INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$696,239
Operating expenses	1,834,485
Capital assets	<u>(15,000)</u>
Grants - State school aid	27,473,769
Grants - Tuition apportionment	2,104,629
Grants - Special education	2,601,305
Grants - Teacher compensation	<u>(941,880)</u>
Grants - Other grants	25,743,839
Reorganization bonuses	<u>(500,000)</u>
Data envelopment analysis	<u>(50,000)</u>
National board certification	<u>40,000</u>
Total all funds - Adjustments/enhancements	\$58,927,386
Less estimated income - Adjustments/enhancements	<u>29,784,889</u>
Total general fund - Adjustments/enhancements	\$29,202,497

Subdivision 2.

STATE LIBRARY

Salaries and wages	\$135,555
Operating expenses	200,125
Grants	<u>155,693</u>
Total all funds - Adjustments/enhancements	\$491,373
Less estimated income - Adjustments/enhancements	<u>27,194</u>
Total general fund - Adjustments/enhancements	\$464,179

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	\$201,314
Operating expenses	275,105
Capital assets	<u>246,772</u>
Total all funds - Adjustments/enhancements	\$723,191

Less estimated income - Adjustments/enhancements	454,220
Total general fund - Adjustments/enhancements	<u>\$268,971</u>

Subdivision 4.

VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$125,411
Operating expenses	(91,377)
Capital assets	<u>49,237</u>
Total all funds - Adjustments/enhancements	<u>\$83,271</u>
Less estimated income - Adjustments/enhancements	<u>(323,935)</u>
Total general fund - Adjustments/enhancements	<u>\$407,206</u>
Total general fund - Section 2	\$30,342,853
Total special funds - Section 2	\$29,942,368
Total all funds - Section 2	<u>\$60,285,221</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, North Dakota vision services - school for the blind, and the state library for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$9,973,925
Operating expenses	14,892,308
Grants - State school aid	516,853,759
Grants - Tuition apportionment	71,600,000
Grants - Special education	52,500,000
Grants - Revenue supplement	5,000,000
Grants - Teacher compensation	50,912,120
Grants - Other grants	207,999,083
National board certification	<u>40,000</u>
Total all funds	<u>\$929,771,195</u>
Less estimated income	<u>295,843,692</u>
Total general fund appropriation	<u>\$633,927,503</u>

Subdivision 2.

STATE LIBRARY

Salaries and wages	\$2,214,126
Operating expenses	1,381,772
Grants	<u>1,552,500</u>
Total all funds	<u>\$5,148,398</u>
Less estimated income	<u>1,657,173</u>
Total general fund appropriation	<u>\$3,491,225</u>

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	\$5,011,122
Operating expenses	1,377,265
Capital assets	<u>279,495</u>
Total all funds	<u>\$6,667,882</u>
Less estimated income	<u>1,325,669</u>
Total general fund appropriation	<u>\$5,342,213</u>

Subdivision 4.

VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$2,665,703
Operating expenses	607,306
Capital assets	67,470
Total all funds	\$3,340,479
Less estimated income	843,448
Total general fund appropriation	\$2,497,031

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$148,800, or so much of the sum as may be necessary, to the division of independent study for the purpose of developing, publishing, and distributing a North Dakota studies textbook and workbook including civic education for both grades four and eight, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. APPROPRIATION. There is 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 division of independent study for the purpose of revitalizing civic education, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Grand total general fund appropriation - H.B. 1013	\$645,456,772
Grand total special funds appropriation - H.B. 1013	\$299,669,982
Grand total all funds appropriation - H.B. 1013	\$945,126,754

SECTION 6. APPROPRIATION. There is appropriated from special funds derived from federal funds and other income the sum of \$30,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing grants for the period beginning with the effective date of this Act and ending June 30, 2005.

SECTION 7. APPROPRIATION - TUITION APPORTIONMENT. The sum of \$71,600,000, included in the grants - tuition apportionment line item in subdivision 1 of section 3 of this Act, is from the state tuition fund in the state treasury. Any additional amount in the state tuition fund that becomes available for distribution to public schools is appropriated to the department of public instruction for that purpose for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. STATE SCHOOL AID AND SPECIAL EDUCATION EXPENDITURE AUTHORITY. The superintendent of public instruction may expend funds included in the grants - state school aid and grants - special education line items in subdivision 1 of section 3 of this Act in payment of grants for educational services that were due in the 2003-05 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2005.

SECTION 9. DISTRIBUTION OF SPECIAL EDUCATION AID. The sum of \$52,500,000, included in the grants - special education line item in subdivision 1 of section 3 of this Act, must be distributed as follows:

1. Fifteen million five hundred thousand dollars to reimburse school districts or special education units for excess costs incurred relating to contracts for students with disabilities.
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 15.1-27-10, excluding reimbursements for student contracts and gifted and talented programs. State special education payments distributed as required by section 15.1-27-10 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 school district or unit.

SECTION 10. PAYMENTS FOR LIMITED ENGLISH PROFICIENT STUDENTS. Payments to school districts educating limited English proficient students, as provided in section 15.1-27-12, must be made by the superintendent of public instruction during the biennium beginning July 1, 2005, and ending June 30, 2007, using up to \$650,000 of the amount included in the grants - state school aid line item in subdivision 1 of section 3 of this Act.

SECTION 11. INDIRECT COST ALLOCATION. Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

SECTION 12. DISPLACED HOMEMAKER FUND. The sum of \$253,646, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the displaced homemaker fund and must be used by the superintendent of public instruction for the purpose of providing services for displaced homemakers, as provided in chapter 14-06.1, during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 13. STATE AID TO PUBLIC LIBRARIES. The line item entitled grants in subdivision 2 of section 3 of this Act includes \$1,000,000 for aid to public libraries, of which no more than one-half is to be expended during the fiscal year ending June 30, 2006.

SECTION 14. FEES DEPOSITED IN VISION SERVICES - SCHOOL FOR THE BLIND OPERATING FUND. Any moneys included in the estimated income line item in subdivision 4 of section 3 of this Act, collected for subscription fees or braille fees, must be deposited in the North Dakota vision services - school for the blind operating fund in the state treasury and may be spent subject to appropriation by the legislative assembly.

SECTION 15. LEGISLATIVE COUNCIL STUDY - SCHOOL FOR THE DEAF AND VISION SERVICES - SCHOOL FOR THE BLIND. The legislative council shall consider studying, during the 2005-06 interim, the potential for cooperative field service delivery between vision services - school for the blind and the school for the deaf. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 16. LEGISLATIVE COUNCIL STUDY - REPORT. The legislative council shall study, during the 2005-06 interim, the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementing the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state. The legislative council also shall evaluate effective programs; opportunities for achievement; and statutory, regulatory, and political barriers to success. The legislative council shall receive input from teachers; administrators; parents; students; local business and community leaders; representatives of higher education; and may use technology, curricular, and programmatic consultants, among others. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 17. LEGISLATIVE INTENT. It is the intent of the fifty-ninth legislative assembly that the department of public instruction not charge school districts for testing relating to the English language learner program.

¹⁰ **SECTION 18. AMENDMENT.** Section 15.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-02. Salary. The annual salary of the superintendent of public instruction is ~~sixty-nine~~ seventy-nine thousand ~~six~~ seven hundred ~~forty-eight~~ fifty-seven dollars through ~~December 31, 2004~~ June 30, 2006, ~~seventy-five and eighty-two~~ thousand nine hundred ~~sixteen~~ forty-seven dollars through ~~June 30, 2002~~, and ~~seventy-seven thousand four hundred thirty-four~~ dollars thereafter.

SECTION 19. EMERGENCY. Section 6 of this Act is declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

¹⁰ Section 15.1-02-02 was also amended by section 11 of House Bill No. 1015, chapter 15.

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 a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the committee on protection and advocacy in section 3 of this Act as follows:

Total all funds - Base level	\$3,226,255
Less estimated income - Base level	<u>2,443,532</u>
Total general fund - Base level	\$782,723

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the committee on protection and advocacy which are included in the appropriation in section 3 of this Act as follows:

Total all funds - Adjustments/enhancements	\$473,314
Less estimated income - Adjustments/enhancements	<u>448,810</u>
Total general fund - Adjustments/enhancements	\$24,504

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 committee on protection and advocacy for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Total all funds	\$3,699,569
Less estimated income	<u>2,892,342</u>
Total general fund appropriation	\$807,227

SECTION 4. LEGISLATIVE INTENT - FEDERAL FUNDS REDUCTION - ELIMINATION OF FULL-TIME EQUIVALENT POSITION. It is the intent of the legislative assembly that if the protection and advocacy project receives less federal funds during the 2005-07 biennium than anticipated, then the protection and advocacy project shall eliminate the new full-time equivalent position for a disabilities advocate for the Turtle Mountain Indian Reservation or eliminate a different full-time equivalent position rather than reduce other services to make up for the reduction of funding to the agency.

Approved April 8, 2005
Filed April 12, 2005

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 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 create and enact two new sections to House Bill No. 1286, as approved by the fifty-ninth legislative assembly, and a new section to Senate Bill No. 2012, as approved by the fifty-ninth legislative assembly, relating to open records requests and to interpretation of provisions relating to refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 4-01-21, 15.1-02-02, 15.1-06-06, 26.1-01-09, 27-02-02, 27-05-03, 49-01-05, 54-03-20, 54-09-05, 54-10-10, 54-11-13, 54-12-11, 54-44.1-06, 54-44.1-06.1, 57-01-04, and 57-40.6-02 of the North Dakota Century Code and section 5 of House Bill No. 1518, section 12 of Senate Bill No. 2015, and section 20 of House Bill No. 1043, as approved by the fifty-ninth legislative assembly, relating to salaries of elected officials, school calendars, lodging reimbursement for members of the legislative assembly, preparation of the budget data, voter approval of imposition of fees for emergency services communication systems, the state wheat commission levy, a legislative council study of the department of corrections and rehabilitation, and the effective date of streamlined sales tax agreement complying amendments; to repeal section 9 of Senate Bill No. 2015, as approved by the fifty-ninth legislative assembly, relating to composite schedules for teacher salaries; to provide for a legislative council study; to provide legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the office of management and budget in section 3 of this Act as follows:

Salaries and wages	\$15,388,231
Operating expenses	11,328,756
Capital assets	733,000
Grants	179,000
Total all funds - Base level	\$27,628,987
Less estimated income - Base level	7,888,476
Total general fund - Base level	\$19,740,511

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of management and budget which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	(\$1,892,438)
Operating expenses	(12,350)

Capital assets	111,000
Grants	210,000
Prairie public broadcasting	1,337,138
Total all funds - Adjustments/enhancements	<u>(\$221,950)</u>
Less estimated income - Adjustments/enhancements	<u>(410,608)</u>
Total general fund - Adjustments/enhancements	\$188,658

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 office of management and budget for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$13,495,793
Operating expenses	11,341,106
Capital assets	844,000
Grants	389,000
Prairie public broadcasting	1,337,138
Total all funds	\$27,407,037
Less estimated income	7,477,868
Total general fund appropriation	\$19,929,169

SECTION 4. CAPITOL BUILDING FUND. The amount of \$25,000, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act, is to be spent by the administration division from the capitol building fund for capitol grounds planning, during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. EXEMPTION. The amount appropriated for the fiscal management division, as contained in section 1 of chapter 36 of the 2003 Session Laws is not subject to the provisions of section 54-44.1-11. 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, 2005, and ending June 30, 2007.

SECTION 6. INTENT. Within the authority included in section 3 of this Act are the following grants and special items:

Boys and girls clubwork	\$53,000
State contingencies	500,000
State memberships and related expenses	477,860
Firefighter's association	126,000
Unemployment insurance	1,500,000
Capitol grounds planning commission	25,000
State consultant	120,000

SECTION 7. TRANSFER. During the biennium beginning July 1, 2005, and ending June 30, 2007, the director of the office of management and budget is authorized to transfer special funds from the lands and minerals trust fund to the general fund in the amount of \$6,800,000.

SECTION 8. FIRE AND TORNADO FUND. The amount of \$126,000, or so much of the amount as is necessary, included in the estimated income line item in section 3 of this Act, is from the fire and tornado fund.

SECTION 9. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. During the biennium ending June 30, 2007, the industrial commission shall transfer to the state general fund up to \$60,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota. The moneys shall be transferred in the amounts and at such times as requested by the director of the office of management and budget. Any transfer authorized may only be made to the extent the transfer does not reduce the Bank's capital structure below \$150,000,000.

11 SECTION 10. AMENDMENT. Section 4-01-21 of the North Dakota Century Code, as amended by House Bill No. 1009, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

4-01-21. Salary of agriculture commissioner. The annual salary of the agriculture commissioner is ~~seventy-one~~ seventy-two thousand ~~nine~~ six hundred ~~seventy~~ sixty-nine dollars through June 30, 2006, and ~~seventy-four~~ seventy-five thousand ~~eight~~ five hundred ~~forty-nine~~ seventy-six dollars thereafter.

12 SECTION 11. AMENDMENT. Section 15.1-02-02 of the North Dakota Century Code, as amended by House Bill No. 1013, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

15.1-02-02. Salary. The annual salary of the superintendent of public instruction is ~~seventy-nine~~ eighty thousand ~~seven~~ five hundred ~~fifty-seven~~ thirty-one dollars through June 30, 2006, ~~eighty-two~~ and eighty-three thousand ~~nine~~ seven hundred ~~forty-seven~~ fifty-three dollars thereafter.

13 SECTION 12. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code, as amended and reenacted by House Bill No. 1154, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 2 of House Bill No. 1076, as approved by the fifty-ninth legislative assembly;

¹¹ Section 4-01-21 was also amended by section 8 of House Bill No. 1009, chapter 9.

¹² Section 15.1-02-02 was also amended by section 18 of House Bill No. 1013, chapter 13.

¹³ Section 15.1-06-06 was also amended by section 1 of House Bill No. 1076, chapter 163, and section 2 of House Bill No. 1154, chapter 167.

3. The students are offered all subjects required by law; and
4. ~~The school is in compliance with the calendar requirements set forth in section 15.1-06-04; and~~
5. The school is in compliance with all local and state health, fire, and safety laws.

¹⁴ **SECTION 13. AMENDMENT.** Section 26.1-01-09 of the North Dakota Century Code, as amended by House Bill No. 1010, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is seventy thousand ~~fifty-nine~~ seventy-three thousand ~~eight~~ eighty dollars through June 30, 2006, and ~~seventy-two~~ seventy-three thousand ~~eight~~ eighty dollars thereafter.

¹⁵ **SECTION 14. AMENDMENT.** Section 27-02-02 of the North Dakota Century Code, as amended by Senate Bill No. 2002, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

27-02-02. Salaries of justices of supreme court. The annual salary of each justice of the supreme court is one hundred ~~two~~ three thousand ~~ninety-six~~ eighty-seven dollars through June 30, 2006, and one hundred ~~six~~ seventy thousand ~~one~~ two hundred ~~eighty~~ ten dollars thereafter. The chief justice of the supreme court is entitled to receive an additional ~~two~~ three thousand ~~nine~~ eighty-six hundred ~~fifteen~~ thirty-six dollars per annum through June 30, 2006, and three thousand one hundred ~~five~~ thirty-six dollars per annum thereafter.

¹⁶ **SECTION 15. AMENDMENT.** Section 27-05-03 of the North Dakota Century Code, as amended by Senate Bill No. 2002, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. The annual salary of each district judge is ~~ninety-three~~ ninety-four thousand ~~three~~ two hundred ~~ninety-one~~ ninety-eight dollars through June 30, 2006, and ~~ninety-seven~~ seventy thousand ~~one~~ two hundred ~~twenty-seven~~ seventy dollars thereafter. Each district judge is entitled to travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the 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 two thousand seven hundred ~~fifty-two~~ seventy-nine dollars per annum, through June 30, 2006, and two thousand eight hundred ~~sixty-two~~ ninety dollars thereafter.

¹⁴ Section 26.1-01-09 was also amended by section 13 of House Bill No. 1010, chapter 10.

¹⁵ Section 27-02-02 was also amended by section 6 of Senate Bill No. 2002, chapter 30.

¹⁶ Section 27-05-03 was also amended by section 7 of Senate Bill No. 2002, chapter 30.

¹⁷ **SECTION 16. AMENDMENT.** Section 49-01-05 of the North Dakota Century Code, as amended by House Bill No. 1008, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~seventy-one~~ seventy-two thousand ~~nine~~ six hundred ~~seventy~~ sixty-nine dollars through June 30, 2006, and ~~seventy-four~~ seventy-five thousand ~~eight~~ five hundred ~~forty-nine~~ seventy-six dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

¹⁸ **SECTION 17. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code, as amended by section 1 of Senate Bill No. 2059 as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly.

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred twenty-five dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of nine 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.

b. Notwithstanding subdivision a:

(1) A member of the legislative assembly may elect to be reimbursed for less than the amount to which the legislator is entitled under this subsection by claiming the lesser amount on a voucher submitted with the receipt required by section 44-08-04.

(2) The legislative council may establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled under subdivision a.

¹⁷ Section 49-01-05 was also amended by section 5 of House Bill No. 1008, chapter 8.

¹⁸ Section 54-03-20 was also amended by section 10 of Senate Bill No. 2001, chapter 29, and section 1 of Senate Bill No. 2059, chapter 472.

3. a. 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 one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle.
 - b. 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 nine hundred dollars per month.
 4. 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.
 5. If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend.
 6. A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.
7. a. 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 two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option.
- b. 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.
- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement

provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

8. 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)].

¹⁹ **SECTION 18. AMENDMENT.** Section 54-09-05 of the North Dakota Century Code, as amended by House Bill No. 1002, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is seventy thousand ~~fifty-nine~~ seventy-three thousand ~~three hundred thirty-nine~~ eight ~~dollars~~ hundred ~~sixty-one~~ sixty-eight dollars through June 30, 2006, and ~~seventy-two~~ seventy-three thousand ~~eight~~ five hundred ~~sixty-one~~ sixty-eight dollars thereafter.

²⁰ **SECTION 19. AMENDMENT.** Section 54-10-10 of the North Dakota Century Code, as amended by House Bill No. 1004, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is seventy thousand ~~fifty-nine~~ seventy-three thousand ~~three hundred thirty-nine~~ eight ~~dollars~~ hundred ~~sixty-one~~ sixty-eight dollars through June 30, 2006, and ~~seventy-two~~ seventy-three thousand ~~eight~~ five hundred ~~sixty-one~~ sixty-eight dollars thereafter.

²¹ **SECTION 20. AMENDMENT.** Section 54-11-13 of the North Dakota Century Code, as amended by House Bill No. 1005, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is sixty-six thousand ~~one~~ sixty thousand ~~eight hundred~~ four ~~sixty-two~~ hundred ~~sixty-two~~ sixty-four dollars through June 30, 2006, and ~~sixty-eight~~ sixty-nine thousand ~~eight~~ four hundred ~~six~~ sixty-four dollars thereafter.

²² **SECTION 21. AMENDMENT.** Section 54-12-11 of the North Dakota Century Code, as amended by House Bill No. 1003, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

¹⁹ Section 54-09-05 was also amended by section 6 of House Bill No. 1002, chapter 2.

²⁰ Section 54-10-10 was also amended by section 5 of House Bill No. 1004, chapter 4.

²¹ Section 54-11-13 was also amended by section 4 of House Bill No. 1005, chapter 5.

²² Section 54-12-11 was also amended by section 16 of House Bill No. 1003, chapter 3.

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~seventy-six~~ seventy-seven thousand ~~nine~~ six hundred ~~eight~~ eighty-five dollars through June 30, 2006, and ~~seventy-nine~~ eighty thousand ~~nine~~ seven hundred ~~eighty-four~~ sixty-one dollars thereafter.

SECTION 22. AMENDMENT. Section 54-44.1-06 of the North Dakota Century Code, as effective after June 30, 2005, is amended and reenacted as follows:

54-44.1-06. (Effective after June 30, 2005) Preparation of the budget data - Contents. The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
 - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
 - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed

classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed ~~general appropriations act and special appropriations acts for executive branch departments, agencies, and institutions, including institutions of higher education, providing the same funding as approved by the most recently adjourned special or regular session of the legislative assembly and amendments to the drafts of appropriations acts~~ embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. ~~The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.~~
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. A financial plan for a prospective period of six years, including the executive budget recommendation for the next biennium, estimates of anticipated general fund and non-general fund revenues prepared for an additional period of four years, and estimates of the general fund and non-general fund appropriations required for each major program for an

additional period of four years. In preparing the financial plan, the office of management and budget may utilize estimates prepared by state agencies or such other information as may be deemed necessary.

10. Any other information as the director of the budget determines desirable or as is required by law.

²³ **SECTION 23. AMENDMENT.** Section 54-44.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-06.1. Contents of capital construction bill. The office of management and budget shall continue to prepare capital construction budgets and a capital construction bill. ~~All future~~ The capital construction bill may only include projects involving bonding. All other capital projects funded with general fund moneys or special funds must be included in draft amendments to the appropriate agency's appropriation bill.

²⁴ **SECTION 24. AMENDMENT.** Section 57-01-04 of the North Dakota Century Code, as amended by House Bill No. 1006, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is seventy-six thousand ~~thirty-six~~ seventy-seven hundred seventy-four dollars through June 30, 2006, and seventy-nine thousand ~~seventy-seven~~ eight hundred forty-five dollars thereafter.

SECTION 25. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose fee on telephone exchange access service and on wireless service - Procedure. The governing body of a county or city may impose a fee on the use of telephone exchange access service and on the use of wireless service in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per telephone access line and per wireless access line.
2. The question of the adoption of the fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general,

²³ Section 23 was vetoed by the Governor, see chapter 616.

²⁴ Section 57-01-04 was also amended by section 5 of House Bill No. 1006, chapter 6.

primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.

3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.
4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.
4. 5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
- ~~5.~~ 6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communications system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
- ~~6.~~ 7. A fee imposed under this section before August 1, 2001, may be extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the governing body of the city or county at a regular or special city or county election.

SECTION 26. AMENDMENT. Section 5 of House Bill No. 1518, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

SECTION 5. EFFECTIVE DATE. The increase in the levy imposed by section 2 of this Act applies to all sales occurring on and after ~~the day of the next calendar quarter occurring at least thirty days after the effective date of this Act~~ July 1, 2005.

SECTION 27. REPEAL. Section 9 of Senate Bill No. 2015, as approved by the fifty-ninth legislative assembly, is repealed.

SECTION 28. LEGISLATIVE COUNCIL - STATE EMPLOYEE COMPENSATION STUDY. The legislative council shall study, during the 2005-06 interim, issues related to state employee compensation. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly. The study must include the following issues, which do not limit the scope of the legislative council's study of the state employee compensation system:

1. Total state employee compensation, including wages and salaries, annual leave, pay grades, classification, disaster or emergency services volunteers' leave, employee assistance program benefits, family and medical leave, funeral leave, holidays, hours of work, jury and witness leave, leave without pay, the merit system, military leave, overtime compensation, retirement benefits, health insurance benefits, severance pay, sick leave, benefits for temporary employees, time off to vote, and veterans' preferences.
2. The human resources system, including the development and determination of pay grades, classifications, and the relevance and appropriateness of utilizing information from the central states compensation association and job service North Dakota, as opposed to intrastate private sector employers in determining appropriate compensation levels and job classifications.
3. Retirement benefits.
4. Health insurance benefits, including the availability of health savings accounts, self-insurance, healthy lifestyle incentives, and the appropriateness of current health insurance benefits.
5. The feasibility and desirability of implementing equity pay, merit pay, and pay for performance compensation systems.

SECTION 29. LEGISLATIVE COUNCIL STUDY - DEPARTMENT OF CORRECTIONS AND REHABILITATION EMPLOYEE SALARIES. The legislative council shall consider studying, during the 2005-06 interim, employee salaries of the department of corrections and rehabilitation. The study must include:

1. Input from the office of management and budget human resource management services division regarding a salary comparison of the department's employees to market, the impact on the salary comparison of the salary increases and equity adjustments authorized for the 2005-07 biennium, and a review of the same information from 1995 through 2005, including a comparison of the salaries for the department

of corrections and rehabilitation employees to market and any salary increases and equity adjustments provided during that time.

2. Input from the department of corrections and rehabilitation regarding employee salary increases provided by job classification from 1995 through 2005, employee turnover by job classification, salary equity funding requested and provided, and other relevant information.
3. A review by the legislative council of reasons relating to the divergence of salaries for the department of corrections and rehabilitation employees from market, including the related impact of demands on the department's budget due to growth in inmate populations, increase in contract housing of inmates, budget reductions, and agency turnback.

The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 30. LEGISLATIVE INTENT - RESTORATION OF PILLARS IN THE MEMORIAL HALL. It is the intent of the fifty-ninth legislative assembly that the office of management and budget restore the pillars in the memorial hall of the state capitol prior to December 1, 2006.

SECTION 31. HIGHWAY FUND TRANSFER TO SPECIAL ROAD FUND. The department of transportation shall transfer from the state highway fund to the special road fund the amount necessary to provide \$500,000 in the special road fund for projects, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 32. TRANSFER. During the biennium beginning July 1, 2005, and ending June 30, 2007, the director of the office of management and budget shall transfer \$55,300,000 from the permanent oil tax trust fund to the general fund.

SECTION 33. APPROPRIATION - JUDICIAL BRANCH. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$114,925, or so much of the sum as may be necessary, to the judicial branch for the purpose of providing additional compensation to elected judges and justices, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 34. APPROPRIATION - NORTH DAKOTA VISION SERVICES - SCHOOL FOR THE BLIND. There is appropriated out any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the North Dakota vision services - school for the blind for the purpose of providing additional funding for temporary salaries, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 35. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, for the biennium beginning July 1, 2005, and ending June 30, 2007, such amounts as may be necessary, but not to exceed the additional general fund revenues that will become available pursuant to the sale of oil put options as provided for in section 1 of chapter 491 of the 2003 Session Laws, to the office of management and budget to purchase oil put options through the state investment board.

SECTION 36. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of

\$65,000, or so much of the sum as may be necessary, to the department of human services for providing additional incentive money to the Lake Region child support enforcement unit, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 37. APPROPRIATION - LEGISLATIVE ASSEMBLY. There is appropriated out of any moneys in the water development trust fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the legislative assembly for the purpose of paying North Dakota's contribution to the legislators' forum for Manitoba, Minnesota, North Dakota, and South Dakota, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 38. Two new sections to House Bill No. 1286, as approved by the fifty-ninth legislative assembly, are created and enacted as follows:

SECTION 13. EFFECTIVE DATE. Section 7 of this Act is effective for records requests made after December 31, 2004.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

SECTION 39. A new section to Senate Bill No. 2012, as approved by the fifty-ninth legislative assembly, is created and enacted as follows:

LEGISLATIVE INTENT REGARDING INTERPRETATION. Sections 13 and 16 of this Act may not be construed to preclude claims for motor vehicle and special fuel tax refunds by tribal members or tribal entities for taxes on purchases made before January 1, 2005.

SECTION 40. AMENDMENT. Section 20 of House Bill No. 1043, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

SECTION 20. EFFECTIVE DATE - EXPIRATION DATE. Section 13 of this Act is effective for taxable events occurring from ~~January 1, 2006~~ October 1, 2005, through June 30, 2007, and is thereafter ineffective. The remainder of this Act is effective for taxable events occurring after ~~December 31~~ September 30, 2005.

SECTION 41. AMENDMENT. Section 12 of Senate Bill No. 2015, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

SECTION 12. LEGISLATIVE COUNCIL STUDY - STRATEGIC PLAN FOR DEPARTMENT OF CORRECTIONS AND REHABILITATION'S INCARCERATION AND CORRECTIONAL FACILITY NEEDS.

1. The legislative council shall appoint an interim committee, during the 2005-06 interim, to develop a legislative strategic plan, including site and facilities' plans, for the department of corrections and rehabilitation's incarceration and correctional facility needs.
2. ~~The legislative council shall appoint a minimum of ten members of the house of representatives and a minimum of five members of the senate. The legislative council shall appoint the chairman of~~

~~the appropriations committee of the house of representatives or the senate or the assistant majority leader of the house of representatives or the senate as the chairman of the committee.~~

~~3.~~ The committee shall:

- a. Receive information from the department of corrections and rehabilitation, regional authorities with regional corrections centers, counties with county jails, cities with city jails, corporations operating private correctional facilities, and others the committee considers necessary to develop a strategic plan for the state's incarceration and correctional facility needs for the next twenty years.
- b. Consider using existing facilities; other available state facilities; and county, local, or private facilities.
- c. Consider any cost and benefits of replacing all or parts of existing correctional facilities or other state property with a modern all-encompassing facility.
- d. Consider state-operated facilities compared to contract-operated state facilities.
- e. Consider contracting with a private entity to provide all or part of the state's correctional and rehabilitation needs.
- f. Consider the impact to the department of corrections and rehabilitation of changing sentencing guidelines, increasing fines as an alternative to incarceration for nonviolent or minor drug offenders, and utilizing alternatives to incarceration and treatment programs, including receiving information regarding the efficiency of treatment programs.
- g. Develop a strategic plan based on the information received by the committee.

~~4.~~ 3. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 42. DEPARTMENT OF HUMAN SERVICES - STATE HOSPITAL EMPLOYEE POSITIONS. The fifty-ninth Legislative Assembly authorizes up to twenty-one additional full-time equivalent employee positions at the state hospital relating to the provisions of Senate Bill No. 2373, subject to approval by the emergency commission and the budget section.

SECTION 43. LAKE REGION STATE COLLEGE NORTH HALL. Lake region state college is authorized to change the scope of the project approved by the 2003 legislative assembly to allow for the renovation of the north hall residence facility to include complete remodeling of the entire facility.

SECTION 44. UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES - PERFORMANCE AUDIT. Notwithstanding North Dakota Century Code section 54-10-01, the state auditor may not conduct a

performance audit during the 2005-07 biennium of the university of North Dakota school of medicine and health sciences until the completion of the school's accreditation process.

SECTION 45. EMERGENCY. Section 38 of this Act and section 8 of Senate Bill No. 2012, as approved by the fifty-ninth legislative assembly, are declared to be an emergency measure.

Approved May 4, 2005

Filed May 4, 2005

CHAPTER 16

HOUSE BILL NO. 1016

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

EMERGENCY SERVICES

AN ACT to provide an appropriation for defraying the expenses of the department of emergency services; to provide for a performance audit of the department of emergency services; to provide authorization for a loan from the Bank of North Dakota; to provide for a report to the legislative council; to provide a statement of legislative intent; to provide for a department of emergency services and an advisory committee; and to amend and reenact subdivision b of subsection 2 of section 28-32-01, subsection 3 of section 37-17.1-05, sections 37-17.1-06, 37-17.1-07, 37-17.1-07.1, 37-17.1-11, 37-17.1-13, 37-17.1-14, 37-17.1-14.1, 37-17.1-15, 37-17.1-22, and 37-17.1-23, subsection 2 of section 39-01-01, and sections 39-10-03.2, 54-23.2-01, 54-23.2-04.1, 54-23.2-09, 57-40.6-11, 57-40.6-12, 61-16.2-03, and 65-06-01 of the North Dakota Century Code, relating to the department of emergency services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of emergency services under the supervision of the adjutant general in section 3 of this Act as follows:

Salaries and wages	\$3,037,559
Operating expenses	1,637,032
Capital assets	12,000
Grants	33,899,585
Total all funds - Base level	\$38,586,176
Less estimated income - Base level	37,217,141
Total general fund - Base level	\$1,369,035

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of emergency services under the supervision of the adjutant general which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$3,540,596
Operating expenses	1,688,812
Capital assets	4,945,923
Grants	13,062,469
Salaries and wages pool	213,493
Total all funds - Adjustments/enhancements	\$23,451,293
Less estimated income - Adjustments/enhancements	19,730,151
Total general fund - Adjustments/enhancements	\$3,721,142

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 emergency services under the supervision of the adjutant general for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$6,578,155
Operating expenses	3,325,844
Capital assets	4,957,923
Grants	46,962,054
Salaries and wages pool	213,493
Total all funds	\$62,037,469
Less estimated income	56,974,292
Total general fund appropriation	\$5,090,177

SECTION 4. STATE HAZARDOUS CHEMICALS PREPAREDNESS AND RESPONSE FUND. The sum of \$225,553, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act, is from the state hazardous chemicals preparedness and response fund and may be spent by the department of emergency services for the purposes provided in section 37-17.1-07.1.

SECTION 5. PERFORMANCE AUDIT - DEPARTMENT OF EMERGENCY SERVICES. The state auditor shall conduct a performance audit of the department of emergency services, including a review of fees collected for 911 services and the utilization of the fees during the biennium beginning July 1, 2005, and ending June 30, 2007. If possible, the audit should include options for the appropriate method of funding costs incurred by the department for providing 911 services, including the costs incurred by the department for answering calls from counties not under contract with the division for 911 services. The state auditor must be granted access to all county and county consortium records pertaining to 911 information. The results of the audit must be presented to the legislative audit and fiscal review committee and filed with the appropriations committee of the sixtieth legislative assembly.

SECTION 6. STATE RADIO COMMUNICATIONS SYSTEM - LOAN AUTHORIZATION - BUDGET SECTION APPROVAL. Subject to the approval of the emergency commission and the budget section, the department of emergency services may borrow an amount not to exceed \$900,000 from the Bank of North Dakota for expenses associated with the migration of the state radio communications system from analog to digital during the biennium beginning July 1, 2005, and ending June 30, 2007. The loan, including interest, is to be repaid with federal funds made available from the United States department of homeland security. Any funds borrowed by the department under this section are hereby appropriated.

SECTION 7. HOMELAND SECURITY FUNDING ALLOCATION REVIEW PROCESS - REPORT TO THE LEGISLATIVE COUNCIL. The department of emergency services shall implement during the 2005-06 interim a review process relating to the department's allocation of federal homeland security funds to political subdivisions. The process must assure that all agencies and responders are involved in the distribution of the federal funds and that the priorities included in the local needs assessment are met. The department, as requested, shall provide the legislative council a report detailing the uses of federal homeland security funds at the state and local level and a report regarding any discrepancies relating to the needs assessments completed by the department and political subdivisions and purchases made with federal homeland security funds.

SECTION 8. LEGISLATIVE INTENT - STATE RADIO COMMUNICATIONS SYSTEM MIGRATION PROJECT - POLITICAL SUBDIVISION FINANCIAL PARTICIPATION. It is the intent of the fifty-ninth legislative assembly that political subdivisions spend a portion of the federal homeland security funding allocations on costs associated with the migration of the state radio communications system from analog to digital.

SECTION 9. LEGISLATIVE INTENT - STATE RADIO COMMUNICATIONS SYSTEM MIGRATION PROJECT. It is the intent of the fifty-ninth legislative assembly that the office of management and budget address all remaining costs associated with the migration of the state radio communications system from analog to digital in the department's budget request for the 2007-09 biennium.

SECTION 10. SALARIES AND WAGES POOL - BUDGET SECTION APPROVAL. The department, in conjunction with the North Dakota human resource management services division of the office of management and budget, shall reevaluate job classifications impacted by the department's reorganization. The department shall report the positions affected by the department's reorganization and a detailed justification of any prior salary increases and a recommendation and analysis of any proposed salary increases or decreases to the budget section. The sum of \$213,493, or so much of the sum as may be necessary, included in the salaries and wages pool line item in section 3 of this Act, is available to the department for providing salary increases to positions affected by the reorganization subject to budget section approval.

²⁵ **SECTION 11. AMENDMENT.** Subdivision b of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- b. The adjutant general with respect to the ~~division of emergency management~~ department of emergency services.

SECTION 12. Department of emergency services. The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. The division of homeland security consists of the state operations center section, the disaster recovery section, and the homeland security section. The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

SECTION 13. Advisory committee to department of emergency services. The adjutant general shall create one or more advisory committees to the department of emergency services. An advisory committee may consist of not more than eleven members representing local and state interests in the department. Members must be appointed to four-year staggered terms. An advisory committee shall advise the department regarding collaboration with political subdivisions, and each member of an advisory committee shall report to the local interest each

²⁵ Section 28-32-01 was also amended by section 13 of House Bill No. 1088, chapter 195, section 14 of House Bill No. 1169, chapter 406, section 6 of Senate Bill No. 2027, chapter 538, and section 29 of Senate Bill No. 2074, chapter 89.

member represents concerning recommendations approved by the committee. Each member of the advisory committee is entitled to be paid sixty-two dollars and fifty cents per day for time spent in attendance at meetings and is entitled to be reimbursed for the member's actual and necessary expenses at the rates and in the manner provided by law for other state officers. The compensation and expenses must be paid out of department appropriations.

SECTION 14. AMENDMENT. Subsection 3 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the division of emergency management department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.

SECTION 15. AMENDMENT. Section 37-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-06. State division of ~~emergency management~~ homeland security.

1. ~~A The division of emergency management is hereby established in the office of the adjutant general. The division shall have a director appointed by, and to serve at the pleasure of, the adjutant general and the director's compensation must be fixed by the adjutant general within the legislative appropriations. The division shall~~ homeland security, ~~must have other~~ professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor, or from other funds made available to the director for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.
2. The division of ~~emergency management~~ homeland security shall prepare and maintain a state disaster plan and keep it current, which plan may include provisions for:
 - a. Averting or minimizing the injury and damage caused by disasters or emergencies.
 - b. Prompt and effective response to a disaster or emergency.

- c. Emergency relief.
 - d. Identification of areas particularly vulnerable to a disaster or emergency.
 - e. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.
 - f. Assistance to local officials in developing and maintaining local emergency management systems.
 - g. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
 - h. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials.
 - i. Organization of manpower and chains of command.
 - j. Coordination of federal, state, and local emergency management activities.
 - k. Coordination of state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
 - l. Other necessary matters.
3. The division of ~~emergency management~~ homeland security shall take an integral part in the development and revision of local disaster or emergency operations plans prepared under section 37-17.1-07. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to local emergency management organizations. These personnel shall consult with local emergency management organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local disaster or emergency plans are intended to apply and may suggest or require revisions.
4. In preparing and revising state disaster or emergency plans, the division of ~~emergency management~~ homeland security shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local emergency management organizations, the division shall encourage them also to seek advice from these sources.
5. State disaster or emergency plans or any parts thereof have the force of law upon implementation by the governor.
6. The division of ~~emergency management~~ homeland security shall:
 - a. Coordinate the procurement and prepositioning of supplies, materials, and equipment for disaster or emergency operations.

- b. Provide guidance and standards for local disaster or emergency operational plans.
- c. Periodically review local disaster or emergency operational plans.
- d. Coordinate state or state and federal assistance to local emergency management organizations.
- e. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
- f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.
- g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
- h. Establish access to a register of persons with types of training and skills important in mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization in carrying out the search for and rescue of persons when no violation of criminal laws exists.
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 16. AMENDMENT. Section 37-17.1-07 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-07. Local emergency management organizations.

1. All areas of the state are within the jurisdiction of and must be served by the division of ~~emergency management~~ homeland security and by a local emergency management organization.
2. Each county shall maintain an emergency management organization which serves the entire county.
3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. The division of ~~emergency management~~ homeland security shall publish and keep current a list of cities desiring to have an emergency management organization of their own.
4. The mayor of a city or chairman of the board of county commissioners shall notify the division of ~~emergency management~~ homeland security of the manner in which the city or county is providing or securing emergency management activities, identify the person who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.
5. Each local emergency management organization shall prepare and keep current a local disaster or emergency operational plan for its area.
6. The local emergency management organization shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the disaster or emergency responsibilities of their local agencies and officials.

SECTION 17. AMENDMENT. Section 37-17.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-07.1. Hazardous chemicals preparedness and response program.

1. ~~Program components.~~
 - a. ~~State emergency response commission.~~ The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
 - b. ~~Program development.~~ In conjunction with the state emergency response commission, the local emergency planning committees, and the local emergency management organizations, the division of ~~emergency management~~ homeland security shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
 - c. ~~Chairperson.~~ The director of the division of ~~emergency management~~ homeland security shall serve as the ~~chairperson~~

chairman of the state emergency response commission. In the absence of the ~~chairperson~~ chairman, the designated vice ~~chairperson~~ chairman shall serve as ~~chairperson~~ chairman. The ~~chairperson~~ chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The ~~chairperson~~ chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of ~~emergency management~~ homeland security.

- d. ~~Facility reporting.~~ For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of ~~emergency management~~ homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.

2. Establishment of funds.

- a. ~~State hazardous chemicals preparedness and response fund.~~ There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of ~~emergency management~~ homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. ~~County hazardous chemicals preparedness and response account.~~ The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. ~~Facility fee system.~~ Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of ~~emergency management~~ homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA, title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of ~~emergency management~~ homeland security shall transfer to the county hazardous chemicals preparedness and response account

one-half of the funds collected from the state's hazardous chemicals fee system.

- d. ~~Exemptions.~~ The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
 - e. ~~Accept funding.~~ The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response program.
 - f. ~~Definition.~~ "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
 - g. ~~City fee system.~~ The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3. ~~Recovery of response costs.~~
- a. ~~General rule.~~ A person who causes a release, as defined in 40 CFR 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in 40 CFR 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
 - b. ~~Amount.~~ In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
4. ~~Penalties and fines.~~
- a. ~~Civil fines.~~ A person who violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], or fails to pay a state hazardous chemicals fee is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For

purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.

- b. ~~Criminal penalty.~~ Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous chemicals response personnel attempting to perform duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. ~~Enforcement.~~

- a. If the director of the division of ~~emergency management homeland security~~ determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief.
- b. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

SECTION 18. AMENDMENT. Section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-11. Disaster or emergency mitigation.

1. In addition to disaster or emergency mitigation measures as included in the state and local disaster or emergency operational plans, the governor shall consider, on a continuing basis, steps that could be taken to mitigate or reduce the harmful consequences of disasters or emergencies. At the governor's direction, and pursuant to any other authority and capability they have, state agencies charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of disaster or emergency mitigation-related matters. The governor, from time to time, shall make recommendations to the legislative assembly, local governments, and other appropriate public and private entities as may facilitate measures for mitigation or reduction of the harmful consequences of disasters or emergencies.
2. The North Dakota state engineer and the water commission, in conjunction with the division of ~~emergency management homeland security~~, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must

concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.

3. If the division of ~~emergency management~~ homeland security determines, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.
4. The governor, at the same time that the governor makes recommendations pursuant to subsection 3, may suspend the standard or control which the governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control remains in effect until rejected by concurrent resolution of both houses of the legislative assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation must be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review in accordance with chapter 28-32 but is not subject to temporary stay pending litigation.

SECTION 19. AMENDMENT. Section 37-17.1-13 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-13. Communications. The division of ~~emergency management~~ homeland security shall ascertain what means exist for rapid and efficient communications in times of a disaster or emergency. The division shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system or network, including the military installations. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

SECTION 20. AMENDMENT. Section 37-17.1-14 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-14. Mutual aid.

1. Counties and cities must be encouraged and assisted by the division of ~~emergency management~~ homeland security to conclude suitable arrangements for furnishing mutual aid in emergency management.

The arrangements must include provision of aid by persons and units in public employ.

2. In review of local disaster or emergency plans, the division of ~~emergency management~~ homeland security shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

SECTION 21. AMENDMENT. Section 37-17.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-14.1. Mutual aid - Cooperation.

1. The division of ~~emergency management~~ homeland security shall encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies within the state for reciprocal aid and assistance in responding to and recovering from actual and potential disasters or emergencies.
2. In reviewing emergency operations plans and programs of political subdivisions, the division of ~~emergency management~~ homeland security shall consider whether ~~they~~ the plans and programs contain adequate provisions for mutual aid.
3. Local emergency management organizations may assist in negotiation of mutual aid agreements between the governor and an adjoining state or province or a political subdivision of an adjoining state or province and shall carry out arrangements of any such agreements relating to the local political subdivision.

SECTION 22. AMENDMENT. Section 37-17.1-15 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-15. Weather modification. The division of ~~emergency management~~ homeland security shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the division determines that precipitation resulting from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, ~~it the division~~ shall direct the officer or agency empowered to issue permits for weather modification operations to suspend the issuance of the permits. ~~Thereupon, no~~ No permits may be issued until the division informs the officer or agency that the danger has passed.

SECTION 23. AMENDMENT. Section 37-17.1-22 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-22. Disaster or emergency response and recovery costs. Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of ~~emergency management~~ homeland security shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if ~~deemed~~ determined necessary by the

governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and ~~such the~~ commission ~~shall~~ immediately shall grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor.

SECTION 24. AMENDMENT. Section 37-17.1-23 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-23. Disaster or emergency recovery funding - Loan authorization.

1. When approved by the emergency commission, the division of ~~emergency management~~ homeland security is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of ~~emergency management~~ homeland security shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:
 4. a. Approval to make an application for a loan from the Bank of North Dakota;
 2. b. Approval for additional personnel required to perform the anticipated recovery activities; and
 3. c. Authority to spend additional state and federal funds for the recovery program.
2. If the request is acceptable, the emergency commission shall approve the request and issue a notice of its action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. If at the end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

²⁶ **SECTION 25. AMENDMENT.** Subsection 2 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Authorized emergency vehicles:
 - 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 a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and 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.
 - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.
 - (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
 - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.
 - (8) Vehicles operated by or under the control of the director of the parks and recreation department.
 - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
 - b. Class B authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
 - c. Class C authorized emergency vehicles means:

²⁶ Section 39-01-01 was also amended by section 1 of House Bill No. 1342, chapter 344, and section 2 of Senate Bill No. 2208, chapter 340.

- (1) Vehicles authorized by the state and division of homeland security or local division of emergency management organizations.
- (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
- (3) Vehicles, other than ambulances, used by emergency medical services personnel.

SECTION 26. AMENDMENT. Section 39-10-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-10-03.2. Class C authorized emergency vehicles. All class B specifications apply to class C authorized emergency vehicles except that a rotating blue flashing light must be displayed in place of an amber light as provided in section 39-10-03.1. With respect to vehicles used by state and local disaster emergency services personnel, the division of ~~emergency management~~ homeland security is responsible for adopting rules for the use of flashing blue lights in accordance with chapter 28-32.

SECTION 27. AMENDMENT. Section 54-23.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-01. Definitions. ~~Wherever the word "director" is hereinafter used, it shall mean the director of the office of management and budget. The word "system" hereinafter used shall mean~~ As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the division of state radio.
2. "Division" means the division of state radio of the department of emergency services.
3. "System" means the state radio broadcasting system.

SECTION 28. AMENDMENT. Section 54-23.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-04.1. Lost or runaway children and missing persons. ~~The state radio department~~ division shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or runaway children and missing persons. ~~The state radio department shall implement~~
2. Implement a data exchange system to compile, to maintain, and to make available for dissemination to North Dakota and to out-of-state law enforcement agencies, descriptive information which that can assist appropriate agencies in recovering lost or runaway children and missing persons.
2. 3. Establish contacts and exchange information regarding lost or runaway children and missing persons with the national crime information center.

- 3- 4. Notify all enforcement agencies that reports of lost or runaway children and missing persons ~~shall~~ must be entered as soon as the minimum level of data specified by the ~~state radio department division~~ is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the ~~state radio department~~ shall ~~division~~ immediately upon notification shall enter the information into the national crime information center file.
- 4- 5. Compile and retain information regarding lost or runaway children or missing persons in a separate file, in a manner that allows the information to be used by law enforcement and other agencies ~~deemed~~ considered appropriate by the ~~state radio department division~~, for investigative purposes. The enforcement agency is responsible for maintaining the disposition of the case and ~~shall~~ periodically shall review the case with the reporting party and the ~~state radio department division~~ to ensure all available information is included and to determine the current status of the case.
- 5- 6. Provide prompt confirmation of the receipt and entry of the lost or runaway children and missing persons report into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 6 7.
- 6- 7. Allow any parent, guardian, or identified family member to submit a missing persons report to the ~~state radio department division~~ division which will be included in the ~~state radio department division~~ file system and transmitted to the national crime information center, if they are unable to receive services from the local law enforcement agency.
- 7- 8. Compile and maintain a historical data repository relating to missing persons for all of the following purposes:

 - a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of missing persons.
 - b. To provide a factual and statistical base for research ~~that~~ which would address the problem of lost or runaway children and missing persons.

SECTION 29. AMENDMENT. Section 54-23.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-09. Mobile data terminal and 911 service fees. ~~State radio communications~~

1. The division shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by ~~state radio communications~~ the division for providing the service.

~~State radio communications~~

2. The division may provide 911 services to a political subdivision with a population of fewer than twenty thousand and shall charge at least twenty cents per telephone access line and wireless access line for 911 services provided to political subdivisions. The fee for 911 wireless

services must be charged to and paid by the political subdivision receiving services from ~~state radio communications~~ the division under this section from and after the date of the agreement entered into by the political subdivision or its designee under section 57-40.6-05, whether the date of that agreement is before or after April 4, 2003. Each county currently receiving 911 services from ~~state radio communications~~ the division shall abide by the standards established by law.

SECTION 30. AMENDMENT. Section 57-40.6-11 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-11. Annual report to legislative council. ~~State radio~~ The division of state radio, in cooperation with entities affected by this section and section 57-40.6-10, shall facilitate the review of emergency 911 telephone system standards and guidelines and shall report annually to the legislative council on the operation of and any recommended changes in the standards and guidelines.

SECTION 31. AMENDMENT. Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-12. Reports of coordination of public safety answering points coverage. The governing body of a city or county, which adopted a fee on telephone exchange access service and wireless service under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the ~~state radio~~ division of state radio and to the public safety answering points coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the ~~office of management and budget~~ adjutant general to represent the ~~state radio~~ division of state radio. The public safety answering points coordinating committee shall file its report with the legislative council by November first of each even-numbered year.

SECTION 32. AMENDMENT. Section 61-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-03. Duties of state engineer. The state engineer shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the division of ~~emergency management~~ homeland security.
4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the

base flood. In cooperation with communities and districts, the state engineer shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

SECTION 33. AMENDMENT. Section 65-06-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06-01. Volunteer firefighter, emergency or disaster volunteer, community emergency response team member, in training defined. The term "volunteer firefighter" means any active member of an organized volunteer fire department of this state and any other individual performing services as a volunteer firefighter for a municipality at the request of the chief or other individual in command of the fire department of that municipality or of any other officer of that municipality having authority to demand service as a firefighter. Firefighters who are paid a regular wage or stipend by the municipality for serving as a firefighter, or whose entire time is devoted to service as a firefighter for the municipality, for the purpose of this chapter, are not volunteer firefighters.

The term "emergency or disaster volunteer" means any individual serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker or is responding to a hazard, emergency disaster, or enemy attack on this country, and who is registered with the disaster emergency organization of a municipality, which has been officially recognized by the director of the state division of ~~emergency management~~ homeland security.

The term "in training" means only those periods of time, during which an emergency or disaster volunteer is receiving instruction, or is engaged in exercises or operations, in preparation for qualification as a disaster emergency worker in the event of a hazard, emergency, disaster, or enemy attack on this country.

The term "community emergency response team member" means an individual registered as a community emergency response team member with the appropriate authority. For purposes of this chapter, a community emergency response team member is acting as a community emergency response team member only when the individual is receiving approved community emergency response team training or is acting as a member of a community emergency response team in an emergency or disaster.

Upon request of the organization, the disaster emergency organization of a municipality shall provide the organization with its roster of registered community emergency response team members.

The term "municipality" when used in reference to emergency or disaster volunteer means the state, cities, counties, municipalities, districts, or any other geographical entity of this state. This definition is not in any way intended to alter any interpretation or ruling in regard to the use of the term "municipality" when used in reference to volunteer firefighters.

Approved April 25, 2005

Filed April 26, 2005

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; to provide an exemption to section 54-44.1-11 of the North Dakota Century Code, relating to unexpended appropriations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the adjutant general's office in section 3 of this Act as follows:

Salaries and wages	\$3,568,516
Operating expenses	2,681,667
Capital assets	144,987
Grants	329,514
Civil air patrol	193,020
Tuition and enlistment compensation	1,007,500
Air guard contract	6,318,364
Army guard contract	15,370,985
Veterans' cemetery	275,146
Total all funds - Base level	\$29,889,699
Less estimated income - Base level	20,718,716
Total general fund - Base level	<u>\$9,170,983</u>

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the adjutant general's office which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$174,055
Operating expenses	531,861
Capital assets	725,013
Grants	5,000,000
Civil air patrol	(36,762)
Tuition and enlistment compensation	1,000,000
Air guard contract	827,137
Army guard contract	9,610,477
Veterans' cemetery	15,425
Total all funds - Adjustments/enhancements	\$17,847,206
Less estimated income - Adjustments/enhancements	10,612,621
Total general fund - Adjustments/enhancements	<u>\$7,234,585</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$3,742,571
Operating expenses	3,213,528
Capital assets	870,000
Grants	5,329,514
Civil air patrol	156,258
Tuition and enlistment compensation	2,007,500
Air guard contract	7,145,501
Army guard contract	24,981,462
Veterans' cemetery	<u>290,571</u>
Total all funds	\$47,736,905
Less estimated income	<u>31,331,337</u>
Total general fund appropriation	\$16,405,568

SECTION 4. VETERANS' CEMETERY MAINTENANCE FUND - APPROPRIATION. The veterans' cemetery line item in section 3 of this Act includes the sum of \$74,274 from the veterans' cemetery maintenance fund for the operation of the veterans' cemetery. Any additional funds received by the adjutant general and deposited in the veterans' cemetery maintenance fund pursuant to sections 37-03-14 and 39-04-10.10 for the operation of the North Dakota veterans' cemetery are appropriated to the adjutant general for that purpose for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. LINE ITEM TRANSFER AUTHORITY - MAINTENANCE AND REPAIRS. The adjutant general may transfer to the operating expenses and capital assets line items contained in section 3 of this Act up to the sum of \$700,000 from the various other line items contained in section 3 of this Act, as determined necessary by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2005, and ending June 30, 2007. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

SECTION 6. EXEMPTION - TRANSFER. Any unexpended general fund appropriation authority relating to the \$5,000,000 appropriated in section 3 of this Act for the payment of adjusted compensation to veterans is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 7. APPROPRIATION. There is appropriated from special funds derived from federal funds the sum of \$4,000,000, or so much of the sum as may be necessary, to the adjutant general's office for the purpose of completing construction projects at federally supported facilities and roads, for the period beginning with the effective date of this Act and ending June 30, 2005.

SECTION 8. EMERGENCY. Section 7 of this Act is declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 18

HOUSE BILL NO. 1018

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

GAME AND FISH DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to amend and reenact sections 20.1-02-16.1 and 20.1-04-15 of the North Dakota Century Code, relating to the game and fish fund and establishing a youth pheasant hunting season; to provide statements of legislative intent; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the game and fish department in section 3 of this Act as follows:

Salaries and wages	\$15,373,582
Operating expenses	9,491,219
Capital assets	2,259,944
Grants	3,602,050
Land habitat and deer depredation	10,181,415
Noxious weed control	300,000
Grants, gifts, and donations	150,000
Nongame wildlife conservation	120,000
Lonetree reservoir	1,337,553
Wildlife services	<u>550,000</u>
Total special funds - Base level	<u>\$43,365,763</u>

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the game and fish department which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,414,443
Operating expenses	245,216
Capital assets	701,172
Grants	2,562,072
Land habitat and deer depredation	46,564
Noxious weed control	50,000
Grants, gifts, and donations	550,000
Lonetree reservoir	190,854
Wildlife services	130,000
Ramp improvements and marina development	<u>800,000</u>
Total special funds - Adjustments/enhancements	<u>\$6,690,321</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 game and fish

department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$16,788,025
Operating expenses	9,736,435
Capital assets	2,961,116
Grants	6,164,122
Land habitat and deer depredation	10,227,979
Noxious weed control	350,000
Grants, gifts, and donations	700,000
Nongame wildlife conservation	120,000
Lonetree reservoir	1,528,407
Wildlife services	680,000
Ramp improvements and marina development	800,000
Total special funds appropriation	\$50,056,084

SECTION 4. PRIVATE LAND HABITAT AND ACCESS IMPROVEMENT.

The sum of \$3,500,000, or so much of the sum as may be necessary, included in the land habitat and deer depredation line item in section 3 of this Act, is from the private land habitat and access improvement fund and must be used by the game and fish department for the private land habitat and access improvement program, as provided in section 20.1-02-05, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. NONGAME WILDLIFE. The sum of \$35,000, or so much of the sum as may be necessary, included in the nongame wildlife conservation line item in section 3 of this Act, is from the nongame wildlife fund and must be used by the game and fish department for the purposes provided in section 20.1-02-16.2, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. WILDLIFE SERVICES - AGRICULTURE COMMISSIONER.

The sum of \$680,000, or so much of the sum as may be necessary, included in the wildlife services line item in section 3 of this Act, is from the game and fish department operating fund and must be provided to the agriculture commissioner to pay for services provided by the United States department of agriculture wildlife services agency to alleviate wildlife depredation and damage in North Dakota. The director of the game and fish department must approve projects, contracts, and agreements relating to the expenditure of these moneys.

SECTION 7. LEGISLATIVE INTENT - GRANTS, GIFTS, AND DONATIONS LINE ITEM - UNDERDAHL GIFT. The grants, gifts, and donations line item in section 3 of this Act includes up to \$500,000 provided as a gift to the game and fish department from the estate of Rodney Underdahl. It is the intent of the fifty-ninth legislative assembly to approve the unrestricted receipt of this gift by the game and fish department.

SECTION 8. LEGISLATIVE INTENT - GRAHAM'S ISLAND ROAD. It is the intent of the fifty-ninth legislative assembly that if the bids for the Graham's Island road construction project are less than the amount budgeted, then \$350,000 of the \$750,000 grant provided by the game and fish department for the road project must be returned to the game and fish fund.

²⁷ **SECTION 9. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval. All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund or portions of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below ~~ten~~ fifteen million dollars, unless otherwise authorized by the budget section.

SECTION 10. AMENDMENT. Section 20.1-04-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-15. Pheasant season - Opening. The open or lawful season on pheasant and the open or lawful season on duck may not commence on the same weekend. The Except as otherwise provided in this section for the opening of pheasant season for youth, the open or lawful season on pheasant may not open earlier than one-half hour before sunrise and the season may not commence earlier than the first Saturday of October of any given year. The governor, in the governor's proclamation, may provide a pheasant hunting season for youth ages twelve through sixteen on the Saturday and Sunday preceding the opening of the regular pheasant season.

SECTION 11. EXPIRATION DATE. Section 10 of this Act is effective through July 31, 2007, and after that date is ineffective.

SECTION 12. EMERGENCY. The ramp improvements and marina development line item contained in section 3 of this Act is declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

²⁷ Section 20.1-02-16.1 was also amended by section 3 of House Bill No. 1138, chapter 207.

CHAPTER 19

HOUSE BILL NO. 1019

(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 to provide a contingent appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state historical society in section 3 of this Act as follows:

Salaries and wages	\$5,078,190
Operating expenses	1,270,004
Capital assets	2,849,544
Grants	1,300,000
Cultural heritage grants	75,000
Yellowstone-Missouri-Fort Union Commission	4,492
Lewis and Clark bicentennial	923,746
Veterans' oral history project	<u>150,000</u>
Total all funds - Base level	\$11,650,976
Less estimated income - Base level	<u>4,391,042</u>
Total general fund - Base level	\$7,259,934

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state historical society which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$511,640
Operating expenses	238,702
Capital assets	(1,867,225)
Cultural heritage grants	250,000
Lewis and Clark bicentennial	8,674
Veterans' oral history project	<u>(150,000)</u>
Total all funds - Adjustments/enhancements	\$(1,008,209)
Less estimated income - Adjustments/enhancements	<u>(1,768,704)</u>
Total general fund - Adjustments/enhancements	\$760,495

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 historical society for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$5,589,830
Operating expenses	1,508,706
Capital assets	982,319

Grants	1,300,000
Cultural heritage grants	325,000
Yellowstone-Missouri-Fort Union Commission	4,492
Lewis and Clark bicentennial	<u>932,420</u>
Total all funds	\$10,642,767
Less estimated income	<u>2,622,338</u>
Total general fund appropriation	\$8,020,429

SECTION 4. REVOLVING FUND - APPROPRIATION. All fees collected by the state historical society and deposited in the revolving fund established pursuant to section 55-03-04 are appropriated to the state historical society for the purposes provided in chapter 55-03, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. GIFTS, GRANTS, AND BEQUESTS - APPROPRIATION. All gifts, grants, devises, bequests, donations, and assignments received by the state historical society and deposited with the state treasurer pursuant to section 55-01-04 are appropriated to the state historical society for the purposes provided in section 55-01-04, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. CONTINGENT APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$35,000, or so much of the sum as may be necessary, to the state historical society for the purpose of constructing a monument in Roosevelt park in Minot to honor recipients of the medal of honor, for the biennium beginning July 1, 2005, and ending June 30, 2007. These funds may be spent only if the state historical society receives matching funds from any source for the monument after consultation and cooperation with the Minot park board, veterans, veterans' groups, and other interested parties through an advisory committee appointed by the director of the state historical society.

Approved May 4, 2005

Filed May 4, 2005

CHAPTER 20

HOUSE BILL NO. 1020

(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 and the International Peace Garden; to designate department of commerce tourism division Lewis and Clark bicentennial grants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the parks and recreation department in section 3 of this Act as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	\$5,254,566
Operating expenses	4,606,788
Capital assets	2,517,794
Grants	4,336,000
Lewis and Clark bicentennial	760,618
Total all funds - Base level	<u>\$17,475,766</u>
Less estimated income - Base level	10,772,107
Total general fund - Base level	<u>\$6,703,659</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

International Peace Garden	<u>\$352,854</u>
Total general fund - Base level	\$352,854
Total general fund - Section 1	\$7,056,513
Total special funds - Section 1	\$10,772,107
Total all funds - Section 1	<u>\$17,828,620</u>

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the parks and recreation department which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	\$523,038
Operating expenses	(307,255)
Capital assets	187,406
Grants	2,144,000
Lewis and Clark bicentennial	(143,283)
Total all funds - Adjustments/enhancements	<u>\$2,403,906</u>
Less estimated income - Adjustments/enhancements	1,602,087
Total general fund - Adjustments/enhancements	<u>\$801,819</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

International Peace Garden	<u>\$250,000</u>
Total general fund - Adjustments/enhancements	<u>\$250,000</u>
Total general fund - Section 2	<u>\$1,051,819</u>
Total special funds - Section 2	<u>\$1,602,087</u>
Total all funds - Section 2	<u>\$2,653,906</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 the parks and recreation department and the International Peace Garden, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	<u>\$5,777,604</u>
Operating expenses	<u>4,299,533</u>
Capital assets	<u>2,705,200</u>
Grants	<u>6,480,000</u>
Lewis and Clark bicentennial	<u>617,335</u>
Total all funds	<u>\$19,879,672</u>
Less estimated income	<u>12,374,194</u>
Total general fund appropriation	<u>\$7,505,478</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

International Peace Garden	<u>\$602,854</u>
Total general fund appropriation	<u>\$602,854</u>
Grand total general fund appropriation - H.B. 1020	<u>\$8,108,332</u>
Grand total special funds appropriation - H.B. 1020	<u>\$12,374,194</u>
Grand total all funds appropriation - H.B. 1020	<u>\$20,482,526</u>

SECTION 4. SNOWMOBILE FUND. The sum of \$907,262, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the snowmobile fund and must be used by the parks and recreation department pursuant to section 39-24-05 for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. TRAIL TAX TRANSFER FUND. The sum of \$128,004, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the trail tax transfer fund and must be used by the parks and recreation department pursuant to section 39-29-05 for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. STATE PARKS GIFT FUND. The sum of \$120,691, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the state parks gift fund and must be used by the parks and recreation department pursuant to section 55-08-07.2 for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. GAME AND FISH OPERATING FUND. The sum of \$122,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the game and fish operating

fund, or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at various state parks for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. TOURISM DIVISION OF DEPARTMENT OF COMMERCE - LEWIS AND CLARK BICENTENNIAL GRANTS. The Lewis and Clark bicentennial line item in section 3 of Senate Bill No. 2018, as approved by the fifty-ninth legislative assembly, includes \$325,000 from the general fund that the tourism division shall provide as grants in the following amounts to the entities listed below during the biennium beginning July 1, 2005, and ending June 30, 2007:

Fort Abraham Lincoln foundation	\$100,000
Lewis and Clark foundation	\$100,000
Three affiliated tribes Lewis and Clark bicentennial	\$50,000
Standing Rock tourism, Lewis and Clark	\$50,000
Cowboy hall of fame	\$25,000

SECTION 9. EMERGENCY. The amount of \$200,000 of federal funds for Lake Sakakawea boat ramp access included in the capital assets line item contained in subdivision 1 of section 3 of this Act is declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 21

HOUSE BILL NO. 1021

(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 provide a line of credit and an appropriation for repayment; to amend and reenact section 61-02-23.3 of the North Dakota Century Code, relating to the operation of the Devils Lake outlet; to provide legislative intent; to provide water commission authority to issue bonds; to provide an exemption from payment of fees; and to authorize a cash advance from the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state water commission in section 3 of this Act as follows:

Administrative and support services	\$2,076,235
Water and atmospheric resources	<u>157,782,619</u>
Total all funds - Base level	\$159,858,854
Less estimated income - Base level	<u>150,473,458</u>
Total general fund - Base level	\$9,385,396

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state water commission which are included in the appropriation in section 3 of this Act as follows:

Administrative and support services	\$92,903
Water and atmospheric resources	<u>(33,963,759)</u>
Total all funds - Adjustments/enhancements	(\$33,870,856)
Less estimated income - Adjustments/enhancements	<u>(25,485,460)</u>
Total general fund - Adjustments/enhancements	(\$8,385,396)

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Administrative and support services	\$2,169,138
Water and atmospheric resources	<u>123,818,860</u>
Total all funds	\$125,987,998
Less estimated income	<u>124,987,998</u>
Total general fund appropriation	\$1,000,000

SECTION 4. RESOURCES TRUST FUND - APPROPRIATION. The sum of \$54,013,116, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act is from the resources trust fund and must be used by the state water commission for purposes authorized by the legislative assembly, for the biennium beginning July 1, 2005, and ending June 30, 2007. Any additional amount in the resources trust fund that becomes available is appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. WATER DEVELOPMENT TRUST FUND - APPROPRIATION. The sum of \$29,963,873, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act is from the water development trust fund and must be used by the state water commission for purposes authorized by the legislative assembly, for the biennium beginning July 1, 2005, and ending June 30, 2007. Any additional amount in the water development trust fund that becomes available is appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. SALE AND PURCHASE OF LAND AND BUILDING - AUTHORITY - CONTINUING APPROPRIATION.

1. The state water commission, on behalf of the state of North Dakota, may sell in one or more parcels the land and building known as the "state water commission maintenance shop" located at 2603 East Broadway Avenue, Bismarck, North Dakota, and legally described as follows:

A tract of land lying in the Northwest Quarter (NW 1/4) of Section Two (2), Township One Hundred Thirty-Eight (138) North, Range Eighty (80) West of the Fifth (5) Principal Meridian, in the County of Burleigh and State of North Dakota, and described as follows:

Commencing at the northwest corner of said section two; thence traveling in a southerly direction along the west boundary of said section two for a distance of seven hundred seventy-four and six-tenths feet (774.60); thence turning a right angle to the left in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00), which shall be called the true point of beginning; thence continuing due east along said line for a distance of eight hundred forty-two and nine-tenths feet (842.90); thence turning a deflection angle of ninety degrees and twenty-two minutes (90 degrees 22') to the right and traveling in a southerly direction to a point of intersection with the north fifty foot railroad right-of-way line; thence traveling in a westerly direction along said north fifty foot railroad right-of-way line to a point of intersection with the west boundary of said section two; thence traveling in a northerly direction along the west boundary of said section two for a distance of four hundred seventy-two and one-tenth feet (472.10); thence turning a right angle to the right in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00); thence traveling in a northerly direction along a line which is parallel to the west boundary of said section two for a distance of one hundred fifty feet (150.00) to the point of

beginning. Including all of the property bounded by the above described line, subject to existing rights-of-way and easements.

The above described tract of land contains 11.77 acres, more or less.

2. The conveyance authorized by this section is exempt from sections 54-01-05.2 and 54-01-05.5. The conveyance may only be made after the property has been appraised and the property must be sold at public auction unless no bid equals or exceeds the minimum appraised value. The appraisal must be dated no earlier than eighteen months before the auction. If at the public auction no bid equals or exceeds the minimum appraised value, the state water commission may negotiate a price for the land with a purchaser.
3. All proceeds from the sale or so much of the sale proceeds as may be necessary, not otherwise appropriated, are appropriated on a continuing basis to the state water commission for the purchase or lease of land and the construction of a building and associated appurtenances to be used as a new maintenance facility. The purchase authorized by this subsection may proceed only after completion of a certified appraisal of the property to be purchased and completion of a physical inspection of any building to be purchased demonstrating that the building is structurally sound and suitable for the state water commission's purposes.
4. The attorney general shall review and approve the form and legality of all legal documents required for the conveyance and purchase authorized by this section, including title opinions.

SECTION 7. BUILDING SALE PROCEEDS. Proceeds of the sale of the state water commission maintenance shop located in east Bismarck, as provided in section 6 of this Act, must be used to purchase or lease land and construct a new maintenance shop building. If the proceeds from the sale are less than \$977,100, the state water commission may use other funds appropriated to the state water commission for the purpose of purchasing or leasing land and constructing a new maintenance shop building. If the proceeds from the sale are not available at the time the state water commission needs to purchase or lease land and construct the new building and associated appurtenances, the state water commission may use other funds appropriated to the commission provided that, upon receipt of the proceeds of the sale, the state water commission shall transfer to the funds from which money was taken an amount equal to any funds utilized for the purchase or lease of land and construction of the new maintenance building. If the state water commission uses other funds appropriated to the commission because the funds from the sale of the land and building are insufficient, the state water commission need not make a transfer of sale proceeds. No more than a total of \$977,100 may be expended from the amounts appropriated under this Act to purchase land and construct the new maintenance building and associated appurtenances.

SECTION 8. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY. Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 3 of this Act. However, this exclusion is only in effect for two years after June 30, 2007. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any

unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 9. LINE OF CREDIT - CONTINGENT APPROPRIATION. If determined necessary by the state water commission, the Bank of North Dakota shall extend a line of credit, not to exceed \$25,000,000, which is appropriated to the state water commission, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 10. REPAYMENT OF LINE OF CREDIT - CONTINGENT APPROPRIATION. If the line of credit authorized in section 9 of this Act is extended to the state water commission by the Bank of North Dakota, there is appropriated out of any moneys in the water development trust fund, the resources trust fund, bond proceeds, or other sources, the sum of \$25,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying the line of credit, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 11. AMENDMENT. Section 61-02-23.3 of the North Dakota Century Code is amended and reenacted as follows:

61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization - Agreement. The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government wherein the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the operation and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and appropriated for the purposes of this section may be used for salaries, equipment, operations, and maintenance costs relating to the Devils Lake outlet.

SECTION 12. LEGISLATIVE INTENT - ADMINISTRATIVE EXPENSES. It is the intent of the fifty-ninth legislative assembly that the use of water development trust fund moneys as a source of funding for state water commission administrative expenses be reduced during the 2007-09 biennium and discontinued as a source thereafter.

SECTION 13. LEGISLATIVE INTENT - NELSON COUNTY INFRASTRUCTURE. It is the intent of the fifty-ninth legislative assembly that the state water commission provide up to \$500,000 for water-related damage to infrastructure in Nelson County.

SECTION 14. BONDING AUTHORITY - WATER PROJECTS. In addition to the \$60,000,000 of bonding authority authorized in section 61-02.1-02.1, the state water commission may issue an additional amount of bonds not to exceed \$7,000,000 plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves during the biennium beginning July 1, 2005, and ending June 30, 2007. The repayment provision of the additional \$7,000,000 bond issuance must be the same as the \$60,000,000 bond issuance as provided for in section 61-02.1-02.1.

SECTION 15. EXEMPTION FROM PAYMENT OF FEES. For purposes of charging fees or requiring payment for services pursuant to sections 54-10-01, 54-12-08, and 54-44.1-15, the state auditor, attorney general, and the director of the

office of management and budget shall consider the funds appropriated to the state water commission from the water development trust fund in the same manner as if the funds were appropriated from the general fund for the 2005-07 biennium.

SECTION 16. STATE WATER COMMISSION - CASH ADVANCE FROM STATE GENERAL FUND. Notwithstanding any other provision of law, the state water commission may receive a cash advance of up to \$5,000,000 from the state general fund during the biennium beginning July 1, 2005, and ending June 30, 2007. The cash advance may be made available for the state water commission only to pay for administrative expenses if sufficient funding is not available in the water development trust fund for these expenses. The cash advance must be repaid upon the deposit of additional tobacco settlement collections in the water development trust fund. The state water commission shall inform the office of management and budget of any cash advance required pursuant to this section. Any cash advance under this section must be repaid to the state general fund by June 30, 2007.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 22**HOUSE BILL NO. 1022**

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

WORKFORCE SAFETY AND INSURANCE

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amount identified in this section represents the base level funding component appropriated to workforce safety and insurance in section 3 of this Act as follows:

Total special funds - Base level	\$32,397,631
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SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amount identified in this section represents the funding adjustments or enhancements to the base funding level for workforce safety and insurance which are included in the appropriation in section 3 of this Act as follows:

Total special funds - Adjustments/enhancements	\$911,935
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SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the workforce safety and insurance fund in the state treasury, not otherwise appropriated, to workforce safety and insurance, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Total special funds appropriation	\$33,309,566
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Approved April 8, 2005
Filed April 12, 2005

CHAPTER 23

HOUSE BILL NO. 1023

(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; and to amend and reenact sections 54-44.1-11 and 54-44.3-12.1 of the North Dakota Century Code, relating to the cancellation of unexpended appropriations and revisions to compensation plans under the central personnel system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the retirement and investment agencies in section 3 of this Act as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,774,885
Operating expenses	986,444
Contingencies	82,000
Contracted services	<u>2,000,000</u>
Total special funds - Base level	\$4,843,329

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$2,653,654
Operating expenses	1,487,504
Contingencies	250,000
Total special funds - Base level	\$4,391,158
Total special funds - Section 1	\$9,234,487

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the retirement and investment agencies which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$185,525
Operating expenses	(71,836)
Contracted services	<u>(2,000,000)</u>
Total special funds - Adjustments/enhancements	(\$1,886,311)

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$208,378
Operating expenses	<u>77,207</u>

Total special funds - Adjustments/enhancements	\$285,585
Total special funds - Section 2	(\$1,600,726)

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,960,410
Operating expenses	914,608
Contingencies	82,000
Total special funds appropriation	\$2,957,018

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$2,862,032
Operating expenses	1,564,711
Contingencies	250,000
Total special funds appropriation	\$4,676,743
Grand total special funds appropriation H.B. 1023	\$7,633,761

SECTION 4. EXEMPTION. The amount appropriated for the retirement and investment office, as contained in subdivision 1 of section 1 of chapter 45 of the 2003 Session Laws is not subject to the provision of section 54-44.1-11. Any unexpended funds from the contracted services appropriation line are available for continued development and implementation of the pension software replacement project.

SECTION 5. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the respective boards, the retirement and investment office and the public employees retirement system may transfer from their respective contingencies line items in subdivisions 1 and 2 of section 3 of this Act to all other line items. The agencies shall notify the office of management and budget of each transfer made pursuant to this section.

²⁸ **SECTION 6. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative

²⁸ Section 54-44.1-11 was also amended by section 1 of House Bill No. 1177, chapter 540, section 1 of Senate Bill No. 2036, chapter 523, and section 1 of Senate Bill No. 2121, chapter 524.

assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

(Effective after June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Authorized ongoing information technology projects.

SECTION 7. AMENDMENT. Section 54-44.3-12.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.1. Revisions to compensation plan. Revisions to the compensation plan may only be made on July first, following the close of a regular legislative session, except that new classifications may be added to the compensation plan during a biennium when deemed necessary by the director. Revisions to the compensation plan ~~do not become effective~~ for county employees covered by the plan ~~until~~ become effective on January first of the first full calendar year following the revision or on July first following the close of a regular legislative session, based on official action by the board of county commissioners. Revisions to the compensation plan may only be made to the extent the legislative assembly appropriates funds to implement such plans.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 24

HOUSE BILL NO. 1024

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

STATE DEPARTMENTS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the general fund authority enacted by the fifty-eighth 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, 2005, and ending June 30, 2005, as follows:

Subdivision 1.

INFORMATION TECHNOLOGY DEPARTMENT

Operating expenses	\$51,421
Division of independent study	89,592
Educational technology council	84,469
EduTech	270,316
Wide area network	359,878
Geographic information system	72,182
Prairie public broadcasting	<u>142,284</u>
Total general fund appropriation	\$1,070,142

Subdivision 2.

OFFICE OF THE ATTORNEY GENERAL

Operating expenses	\$105,000
Arrest and return of fugitives	<u>5,000</u>
Total general fund appropriation	\$110,000

Subdivision 3.

DIVISION OF EMERGENCY MANAGEMENT

2004 fire expenditures	\$151,369
Operating expenses	<u>7,472,145</u>
Total general fund appropriation	\$7,623,514

Subdivision 4.

NORTH DAKOTA VETERANS' HOME

Operating expenses	<u>\$200,000</u>
Total general fund appropriation	\$200,000

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

1997 flood expenditures	<u>\$371,000</u>
Total general fund appropriation	\$371,000

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

2000 flood expenditures	\$1,500,000
Total general fund appropriation	<u>\$1,500,000</u>

Subdivision 7.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

ConnectND expenses	\$617,520
Total general fund appropriation	<u>\$617,520</u>

Subdivision 8.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Prisons division	\$1,732,168
Total general fund appropriation	<u>\$1,732,168</u>
Grand total general fund appropriation H.B. 1024	\$13,224,344

SECTION 2. EXEMPTION. The appropriation contained in subdivision 3 of section 1 of this Act is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation are available during the biennium beginning July 1, 2005, and ending June 30, 2007, for the purpose of providing state matching funds for public assistance and disaster hazard mitigation.

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

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 25

HOUSE BILL NO. 1050

(Representatives Carlisle, Martinson, Porter)
(Senators Stenehjem, Nething, Schobinger)

STATE EMPLOYEE COMPENSATION ADJUSTMENTS

AN ACT to provide a statement of legislative intent regarding state employee compensation adjustments; and to provide an appropriation for additional state employee compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-ninth legislative assembly that 2005-07 biennium compensation adjustments for permanent state employees are to be increases of four percent beginning with the month of July 2005, to be paid in August 2005, and of four percent beginning with the month of July 2006, to be paid in August 2006.

Employees whose documented performance levels do not meet standards are not eligible for the general increases.

Probationary employees are not entitled to the general increases. However, probationary employees may be given all or a portion of the increases upon completion of probation, at the discretion of the appointing authority.

During the biennium, no salary increase other than the four percent in July 2005 and the four percent in July 2006 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

Each agency appropriation for salaries and wages is increased by four percent the first year and four percent the second year of the 2005-07 biennium for these compensation adjustments.

SECTION 2. AGENCY SALARY INCREASE INFORMATION. State agencies shall report to the human resources management services division of the office of management and budget in the format developed by the division, information regarding the state employee salary increases provided pursuant to section 1 of this Act. The human resources management services division shall analyze the impact of the increases on the classified employee system and include this analysis in the division's presentation to the appropriations committees of the sixtieth legislative assembly.

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 agencies listed below for the purpose of providing additional compensation to state employees of the various agencies, for the biennium beginning July 1, 2005, and ending June 30, 2007:

	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor	\$18,647		\$18,647
Secretary of state	18,079	\$412	18,491
Office of management and budget	76,842	19,108	95,950
Information technology department	17,139	261,063	278,202
State auditor	37,752	17,374	55,126
State treasurer	5,283		5,283
Attorney general	119,265	42,774	162,039
Tax commissioner	108,832		108,832
Office of administrative hearings		8,792	8,792
Legislative council	38,169		38,169
Judicial branch	256,101	7,961	264,062
Retirement and investment office		16,207	16,207
Public employees retirement system		23,494	23,494
Department of public instruction	27,084	55,943	83,027
Land department		18,442	18,442
State library	15,857	2,099	17,956
School for the deaf	22,884	1,596	24,480
North Dakota vision services - school for the blind	7,578	2,999	10,577
Board for career and technical education	17,729	8,940	26,669
State department of health	96,462	175,470	271,932
Veterans' home	49,836		49,836
Indian affairs commission	2,832		2,832
Department of veterans' affairs	4,085		4,085
Department of human services	939,599	552,033	1,491,632
Protection and advocacy project	4,866	16,544	21,410
Job service	781	291,876	292,657
Insurance commissioner		42,621	42,621
Industrial commission	43,829	7,113	50,942
Labor commissioner	7,085	2,213	9,298
Public service commission	28,213	15,631	43,844
Aeronautics commission		5,797	5,797
Department of financial institutions		28,958	28,958
Securities department	9,430		9,430
Bank of North Dakota		149,018	149,018
Housing finance agency		36,355	36,355
Workforce safety and insurance		213,435	213,435
Highway patrol	168,909	5,461	174,370
Division of emergency management	25,495	22,988	48,483
Department of corrections and rehabilitation	438,759	38,484	477,243
Adjutant general	32,634	84,212	116,846
Department of commerce	43,228	19,289	62,517
Agriculture commissioner	29,656	22,767	52,423
Seed department		24,274	24,274
Upper great plains transportation institute	2,903	64,844	67,747
Branch research centers	58,568	18,264	76,832
NDSU extension service	153,847	107,685	261,532
Northern crops institute	5,663	4,071	9,734
Main research center	268,579	139,324	407,903
Agronomy seed farm		3,326	3,326
Historical society	38,629	4,827	43,456
Council on the arts	3,714		3,714
Game and fish department		143,043	143,043
Parks and recreation department	33,620	3,182	36,802
State water commission	11,220	69,208	80,428
Department of transportation		835,451	835,451
Total	\$3,289,683	\$3,634,968	\$6,924,651

Approved May 11, 2005
 Filed May 11, 2005

CHAPTER 26

HOUSE BILL NO. 1152

(Appropriations Committee)

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

STUDENT LOAN TRUST TRANSFER

AN ACT to provide for a transfer of earnings from the student loan trust to the general fund; and to amend and reenact section 54-17-25 of the North Dakota Century Code, relating to bonds of the student loan trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Student loan trust transfer to state general fund. The industrial commission shall transfer to the general fund in the state treasury the sum of nine million dollars of earnings from the North Dakota student loan trust. The moneys must be transferred in such amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 2005, and ending June 30, 2007, and upon certification by the student loan trust trustee that sufficient moneys remain available to pay all debt service on student loan trust bonds, all required rebate payments to the United States treasury, and all program operating expenses.

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, or that the public will otherwise benefit, 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 industrial commission may issue subordinate or residual bonds in a total principal amount not to exceed twenty-three million dollars plus costs of issuance and any reasonably required reserve whenever the industrial commission determines that it is appropriate or expedient to do so and the bonds may contain such terms and provisions as the commission may determine. 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 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 United States government guaranteed or reinsured or 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.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 27

HOUSE BILL NO. 1408

(Representatives Grande, Devlin, Kreidt)
(Senators Andrist, Brown, Lyson)

SUBSTANCE ABUSE TREATMENT PILOT PROJECT

AN ACT to provide an appropriation to the department of corrections and rehabilitation for a pilot project for an alternative care program for adults with substance abuse issues; and to provide for a report to the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - PILOT PROJECT - REPORT TO SIXTIETH LEGISLATIVE ASSEMBLY. There is 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 corrections and rehabilitation for the purpose of reimbursing a nonprofit, faith-based organization in North Dakota for room and board costs associated with an extended residential care program in northwestern North Dakota for indigent adults with alcohol or other substance abuse issues as a pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007. The recipient, selected by a competitive bid process, shall use the funding for room and board costs relating to the pilot project. The department shall establish criteria that meets standards and best practices of the American corrections association for the population to be served and for the residential care services to be provided. The department shall provide a report to the sixtieth legislative assembly on the pilot project. The report must include information on the results and outcomes of the pilot project, the department's recommendations regarding continuing or expanding funding for the program, and its recommendations regarding the development of a payment system for room and board costs for these residential care services providers.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 28**HOUSE BILL NO. 1445**

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

HEALTH CARE TRUST FUND TRANSFER

AN ACT to provide for a transfer from the health care trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TRANSFER. During the biennium beginning July 1, 2005, and ending June 30, 2007, the director of the office of management and budget shall transfer \$16,900,000 from the health care trust fund to the general fund.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 29

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 state government; to provide for governance of a legislative applications replacement system project; to provide for applications and transfers; to provide for a legislative council study; to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation of members of the legislative assembly; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the legislative branch of state government in section 3 of this Act as follows:

Subdivision 1.

FIFTY-NINTH AND SIXTIETH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	\$5,482,878
Operating expenses	2,904,850
Capital assets	6,000
National conference of state legislatures	167,524
Total general fund - Base level	\$8,561,252

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$4,916,029
Operating expenses	2,209,827
Capital assets	57,000
Information technology study	350,000
Total general fund - Base level	\$7,532,856
Total general fund - Section 1	\$16,094,108

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the legislative branch of state government which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

FIFTY-NINTH AND SIXTIETH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	\$601,739
Operating expenses	92,923
Capital assets	226,085
National conference of state legislatures	10,226
Total general fund - Adjustments/enhancements	\$930,973

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$251,007
Operating expenses	157,909
Capital assets	(16,000)
Information technology study	(350,000)
Total general fund - Adjustments/enhancements	\$42,916
Total general fund - Section 2	\$973,889

SECTION 3. 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 appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of 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, 2007, as follows:

Subdivision 1.

FIFTY-NINTH AND SIXTIETH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	\$6,084,617
Operating expenses	2,997,773
Capital assets	232,085
National conference of state legislatures	<u>177,750</u>
Total general fund appropriation	\$9,492,225

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$5,167,036
Operating expenses	2,367,736
Capital assets	<u>41,000</u>
Total general fund appropriation	\$7,575,772
Grand total general fund appropriation S.B. 2001	\$17,067,997

SECTION 4. 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-ninth and sixtieth 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 5. LEGISLATIVE APPLICATIONS REPLACEMENT SYSTEM GOVERNANCE. The legislative council shall develop, during the 2005-06 interim, a design, an analysis, and a plan for implementation of a replacement system for legislative applications. The legislative council staff and the information technology department staff shall develop a project plan. The legislative council's interim legislative management committee shall review the project plan and may request revisions to the plan before adopting the plan. The legislative council chairman may appoint an executive steering group for the project which may consist of members from the legislative council staff, members from the information technology department staff, and legislators. The project plan must be developed in a phased approach and must include a process for soliciting suggestions from members of the

legislative assembly regarding system functions. After completion of a project phase, the legislative management committee shall review and approve the deliverables from the completed phase before any consideration may be made for a subsequent phase. The individual designated as the project manager shall provide reports regarding the project as required by chapters 54-35 and 54-59.

SECTION 6. LEGISLATIVE COUNCIL STUDY - PRINTING OF BILLS AND RESOLUTIONS. The legislative council, through its legislative management committee, shall study, during the 2005-06 interim, the feasibility and desirability of arranging for the printing of bills and resolutions for the sixtieth legislative assembly by using computers and high-speed printers rather than printing multiple copies of all bills and having copies available in the bill and journal room. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixtieth legislative assembly.

SECTION 7. LEGISLATIVE COUNCIL STUDY - LEGISLATIVE MEETING ROOMS. The legislative council, through its legislative management committee, shall study, during the 2005-06 interim, the need for additional legislative committee meeting rooms. The legislative council may expend any funds available for the remodeling of legislative meeting rooms if the study concludes that additional meeting rooms are needed. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixtieth legislative assembly.

SECTION 8. LEGISLATIVE COUNCIL STUDY - DIVISION CHAIRMEN PAY. The legislative council, through its legislative management committee, shall study, during the 2005-06 interim, the appropriateness of increasing the daily compensation for chairmen of substantive standing committee divisions established by rule of the house or senate. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixtieth legislative assembly.

SECTION 9. APPLICATION AND TRANSFER AUTHORITY. North Dakota Century Code sections 54-16-04 and 54-44.1-11 do not apply to chapter 1 of the 2003 Session Laws. Any unexpended funds from the appropriations in chapter 1 of the 2003 Session Laws may be used to assist in the cost of the legislative applications replacement project, including preplanning costs. The director of the office of management and budget and the state treasurer shall make transfers of funds between the line items and the agencies of the legislative branch within section 1 of that chapter as requested by the chairman of the legislative council or the chairman's designee.

²⁹ **SECTION 10. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly.

1. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred

²⁹ Section 54-03-20 was also amended by section 17 of House Bill No. 1015, chapter 15, and section 1 of Senate Bill No. 2059, chapter 472.

twenty-five dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

2. 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.
3. a. 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 one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle.

b. 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.
4. 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.
5. If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend.
6. A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.
7. a. 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 ~~two~~ three hundred

fifty dollars a month, which is payable every six months or monthly, at the member's option.

- b. 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.
- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.
- 8. 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 11. EFFECTIVE DATE. Section 10 of this Act becomes effective on July 1, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 30

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 amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of supreme and district court judges; to provide an exemption to section 54-44.1-11 relating to unexpended appropriations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the judicial branch in section 3 of this Act as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$5,847,592
Operating expenses	1,665,382
Judges retirement	<u>132,288</u>
Total general fund - Base level	\$7,645,262

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$33,913,180
Operating expenses	14,032,376
Capital assets	74,500
Judges retirement	826,944
UND-central legal research	80,000
Alternative dispute resolution	<u>20,000</u>
Total all funds - Base level	\$48,947,000
Less estimated income - Base level	<u>1,762,735</u>
Total general fund - Base level	\$47,184,265

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	<u>\$538,643</u>
Total all funds - Base level	\$538,643
Less estimated income - Base level	<u>280,801</u>
Total general fund - Base level	\$257,842
Total general fund - Section 1	\$55,087,369
Total other funds - Section 1	\$2,043,536
Total all funds - Section 1	\$57,130,905

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the judicial branch which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$562,858
Operating expenses	261,879
Capital assets	8,000
Judges retirement	<u>1,327</u>
Total all funds - Adjustments/enhancements	\$834,064
Less estimated income - Adjustments/enhancements	<u>2,500</u>
Total general fund - Adjustments/enhancements	\$831,564

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$2,781,752
Operating expenses	(3,337,596)
Capital assets	111,000
Indigent defense - July 1, 2005 - December 31, 2005	2,769,101
Indigent defense - January 1, 2006 - June 30, 2007	6,723,674
Judges retirement	(127,041)
UND-central legal research	0
Alternative dispute resolution	<u>0</u>
Total all funds - Adjustments/enhancements	\$8,920,890
Less estimated income - Adjustments/enhancements	<u>471,182</u>
Total general fund - Adjustments/enhancements	\$8,449,708

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	\$64,757
Total all funds - Adjustments/enhancements	<u>\$64,757</u>
Less estimated income - Adjustments/enhancements	<u>4,799</u>
Total general fund - Adjustments/enhancements	\$59,958
Total general fund - Section 2	\$9,341,230
Total other funds - Section 2	\$478,481
Total all funds - Section 2	\$9,819,711

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$6,410,450
Operating expenses	1,927,261
Capital assets	8,000
Judges retirement	<u>133,615</u>
Total all funds	\$8,479,326
Less estimated income	<u>2,500</u>
Total general fund appropriation	\$8,476,826

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$36,694,932
Operating expenses	10,694,780
Capital assets	185,500

Indigent defense - July 1, 2005 - December 31, 2005	2,769,101
Indigent defense - January 1, 2006 - June 30, 2007	6,723,674
Judges retirement	699,903
UND-central legal research	80,000
Alternative dispute resolution	20,000
Total all funds	\$57,867,890
Less estimated income	2,233,917
Total general fund appropriation	\$55,633,973

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	\$603,400
Total all funds	\$603,400
Less estimated income	285,600
Total general fund appropriation	\$317,800
Grand total general fund appropriation - S.B. 2002	\$64,794,192
Grand total other funds appropriation - S.B. 2002	\$2,722,017
Grand total all funds appropriation - S.B. 2002	\$67,516,209

SECTION 4. APPROPRIATION. There are 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, 2005, and ending June 30, 2007.

SECTION 5. 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.

³⁰ **SECTION 6. AMENDMENT.** Section 27-02-02 of the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges justices of supreme court. The annual salary of each ~~judge justice~~ of the supreme court is ~~ninety-two one hundred two thousand two hundred eighty-nine ninety-six~~ dollars through June 30, ~~2002~~ 2006, and ~~ninety-nine one hundred six thousand one hundred twenty-two eighty~~ dollars thereafter. The chief justice of the supreme court is entitled to receive an additional two thousand ~~five nine hundred sixty-nine eighty-six~~ dollars per annum through June 30, ~~2002~~ 2006, and ~~two three thousand eight one hundred ninety-nine five~~ dollars per annum thereafter.

³¹ **SECTION 7. AMENDMENT.** Section 27-05-03 of the North Dakota Century Code is amended and reenacted as follows:

³⁰ Section 27-02-02 was also amended by section 14 of House Bill No. 1015, chapter 15.

³¹ Section 27-05-03 was also amended by section 15 of House Bill No. 1015, chapter 15.

27-05-03. Salaries and expenses of district judges. The annual salary of each district judge is ~~eighty-four~~ ninety-three thousand ~~seven hundred sixty-five~~ three hundred ninety-one dollars through June 30, ~~2002~~ 2006, and ~~ninety ninety-seven~~ thousand six hundred seventy-one one hundred twenty-seven dollars thereafter. Each district judge is entitled to travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the 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 two~~ thousand nine ~~seven~~ hundred eighty-nine fifty-two dollars per annum, through June 30, ~~2002~~ 2006, and two thousand ~~six~~ eight hundred ~~seventy-two~~ sixty-two dollars thereafter.

SECTION 8. EXEMPTION. The amount appropriated for the supreme court and the district courts, as contained in subdivisions 1 and 2 of section 1 of chapter 2 of the 2003 Session Laws, is not subject to the provisions of section 54-44.1-11 for an amount of up to \$250,078. Any available funds are to be used for the purpose of establishing and defraying the expenses of the commission on legal counsel for indigents established by 2005 Senate Bill No. 2027 during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 9. APPROPRIATION - TRANSFER. In addition to the \$250,078 of unexpended general fund moneys that the supreme court and district courts are allowed to carry over from the 2003-05 biennium pursuant to section 8 of this Act, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$365,593, or so much of the sum as may be necessary, and \$200,000 from the indigent defense administration fund, to the district courts for the purpose of establishing and defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2005, and ending June 30, 2007. Any moneys not expended by the district courts for this purpose by December 31, 2005, are available to the commission on legal counsel for indigents and the appropriation must be transferred to the commission on January 1, 2006.

SECTION 10. EMERGENCY. Section 8 of this Act is declared to be an emergency measure.

Approved May 4, 2005
Filed May 4, 2005

CHAPTER 31

SENATE BILL NO. 2003

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

UNIVERSITY SYSTEM

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide statements of legislative intent; to provide for reports to the budget section; to provide for a legislative council study; to amend and reenact section 15-62.2-01 of the North Dakota Century Code, relating to student financial assistance grants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the North Dakota university system office and to the various entities and institutions under the supervision of the board of higher education listed in section 3 of this Act as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Capital assets	\$12,790,689
Competitive research	4,750,000
Centers for excellence	1,550,000
Board initiatives	485,306
System governance	4,472,850
Title II	695,600
Technology pool	25,089,639
Operations pool	578,417
Contingency and capital emergency	1,752,767
Professional liability insurance	1,850,000
Student financial assistance grants	2,930,215
Professional student exchange program	1,678,300
Scholars program	816,368
Native American scholarships	204,086
Education incentive programs	830,000
Total all funds - Base level	<u>\$60,474,237</u>
Less estimated income - Base level	<u>3,855,507</u>
Total general fund - Base level	<u>\$56,618,730</u>

Subdivision 2.

BISMARCK STATE COLLEGE

Operations	\$16,112,327
Capital assets	2,035,000
Total all funds - Base level	<u>\$18,147,327</u>
Less estimated income - Base level	<u>1,785,000</u>
Total general fund - Base level	<u>\$16,362,327</u>

Subdivision 3.

LAKE REGION STATE COLLEGE

Operations	\$5,032,682
Capital assets	<u>419,831</u>
Total all funds - Base level	\$5,452,513
Less estimated income - Base level	<u>375,000</u>
Total general fund - Base level	\$5,077,513

Subdivision 4.

WILLISTON STATE COLLEGE

Operations	\$5,387,371
Capital assets	<u>88,790</u>
Total general fund - Base level	\$5,476,161

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Operations	\$84,558,126
Capital assets	<u>55,662,136</u>
Total all funds - Base level	\$140,220,262
Less estimated income - Base level	<u>53,300,000</u>
Total general fund - Base level	\$86,920,262

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Operations	\$67,576,959
Capital assets	<u>27,737,531</u>
Total all funds - Base level	\$95,314,490
Less estimated income - Base level	<u>26,000,000</u>
Total general fund - Base level	\$69,314,490

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Operations	\$23,936,824
Capital assets	<u>4,442,420</u>
Total all funds - Base level	\$28,379,244
Less estimated income - Base level	<u>3,668,920</u>
Total general fund - Base level	\$24,710,324

Subdivision 8.

DICKINSON STATE UNIVERSITY

Operations	\$13,598,831
Capital assets	<u>11,276,009</u>
Total all funds - Base level	\$24,874,840
Less estimated income - Base level	<u>10,882,047</u>
Total general fund - Base level	\$13,992,793

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Operations	\$8,602,335
Capital assets	<u>5,769,589</u>
Total all funds - Base level	\$14,371,924
Less estimated income - Base level	<u>5,505,000</u>
Total general fund - Base level	\$8,866,924

Subdivision 10.

MINOT STATE UNIVERSITY

Operations	\$25,769,578
Capital assets	<u>612,850</u>
Total general fund - Base level	\$26,382,428

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Operations	\$11,304,672
Capital assets	<u>4,350,634</u>
Total all funds - Base level	\$15,655,306
Less estimated income - Base level	<u>4,085,300</u>
Total general fund - Base level	\$11,570,006

Subdivision 12.

MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$4,102,856
Capital assets	<u>209,663</u>
Total general fund - Base level	\$4,312,519

Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH
SCIENCES

Operations	<u>\$30,165,865</u>
Total general fund - Base level	\$30,165,865

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Operations	\$2,715,016
Capital assets	<u>146,061</u>
Total all funds - Base level	\$2,861,077
Less estimated income - Base level	<u>1,090,001</u>
General fund - Base level	\$1,771,076
Total general fund - Section 1	\$361,541,418
Total estimated income - Section 1	\$110,546,775
Total all funds - Section 1	\$472,088,193

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the North Dakota university system office and to the various entities and institutions under the supervision of the board of higher education which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE AND INSTITUTIONS

Capital assets	\$1,487,452
Competitive research program	440,000
Centers for excellence	(1,550,000)
Board initiatives	1,399,694
System governance	1,045,572
Common information services	(4,526,546)
Operations pool	(189,858)
Equity pool	2,000,000
Contingency and capital emergency	(1,315,844)
Professional liability insurance	(500,000)

Student financial assistance grants	574,187
Professional student exchange program	186,480
Scholars program	45,709
Native American scholarships	47,902
Education incentive programs	397,902
Total all funds - Adjustments/enhancements	<u>(\$457,350)</u>
Less estimated income - Adjustments/enhancements	<u>(1,518,231)</u>
Total general fund - Adjustments/enhancements	\$1,060,881

Subdivision 2.

BISMARCK STATE COLLEGE

Operations	\$753,221
Capital assets	<u>(1,288,719)</u>
Total all funds - Adjustments/enhancements	<u>(\$535,498)</u>
Less estimated income - Adjustments/enhancements	<u>(1,282,200)</u>
Total general fund - Adjustments/enhancements	\$746,702

Subdivision 3.

LAKE REGION STATE COLLEGE

Operations	\$357,307
Capital assets	<u>(32,294)</u>
Total all funds - Adjustments/enhancements	<u>\$325,013</u>
Less estimated income - Adjustments/enhancements	<u>(375,000)</u>
Total general fund - Adjustments/enhancements	\$700,013

Subdivision 4.

WILLISTON STATE COLLEGE

Operations	\$365,626
Capital assets	<u>8,047,685</u>
Total all funds - Adjustments/enhancements	<u>\$8,413,311</u>
Less estimated income - Adjustments/enhancements	<u>7,960,000</u>
Total general fund - Adjustments/enhancements	\$453,311

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Operations	\$7,993,476
Capital assets	<u>1,038,409</u>
Total all funds - Adjustments/enhancements	<u>\$9,031,885</u>
Less estimated income - Adjustments/enhancements	<u>1,100,000</u>
Total general fund - Adjustments/enhancements	\$7,931,885

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Operations	\$8,227,691
Capital assets	<u>(26,045,305)</u>
Total all funds - Adjustments/enhancements	<u>(\$17,817,614)</u>
Less estimated income - Adjustments/enhancements	<u>(26,000,000)</u>
Total general fund - Adjustments/enhancements	\$8,182,386

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Operations	\$1,050,004
Capital assets	<u>(1,620,168)</u>
Total all funds - Adjustments/enhancements	<u>(\$570,164)</u>
Less estimated income - Adjustments/enhancements	<u>(1,600,000)</u>
Total general fund - Adjustments/enhancements	\$1,029,836

Subdivision 8.

DICKINSON STATE UNIVERSITY

Operations	\$1,112,796
Capital assets	<u>(5,892,319)</u>
Total all funds - Adjustments/enhancements	<u>(\$4,779,523)</u>
Less estimated income - Adjustments/enhancements	<u>(5,882,047)</u>
Total general fund - Adjustments/enhancements	\$1,102,524

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Operations	\$401,295
Capital assets	<u>(3,910,595)</u>
Total all funds - Adjustments/enhancements	<u>(\$3,509,300)</u>
Less estimated income - Adjustments/enhancements	<u>(4,005,000)</u>
Total general fund - Adjustments/enhancements	\$495,700

Subdivision 10.

MINOT STATE UNIVERSITY

Operations	\$1,446,271
Capital assets	<u>3,599,020</u>
Total all funds - Adjustments/enhancements	<u>\$5,045,291</u>
Less estimated income - Adjustments/enhancements	<u>3,535,000</u>
Total general fund - Adjustments/enhancements	\$1,510,291

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Operations	\$501,854
Capital assets	<u>(3,842,218)</u>
Total all funds - Adjustments/enhancements	<u>(\$3,340,364)</u>
Less estimated income - Adjustments/enhancements	<u>(4,085,300)</u>
Total general fund - Adjustments/enhancements	\$744,936

Subdivision 12.

MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$231,604
Capital assets	<u>3,400,062</u>
Total all funds - Adjustments/enhancements	<u>\$3,631,666</u>
Less estimate income - Adjustments/enhancements	<u>3,500,000</u>
Total general fund - Adjustments/enhancements	\$131,666

Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH
SCIENCES

Operations	\$1,195,137
Total general fund - Adjustments/enhancements	\$1,195,137

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Capital assets	<u>(\$44,423)</u>
Operations	<u>210,630</u>
Total all funds - Adjustments/enhancements	<u>\$166,207</u>
Less estimated income - Adjustments/enhancements	<u>(115,000)</u>
Total general fund - Adjustments/enhancements	<u>\$281,207</u>
Total general fund - Section 2	\$25,566,475
Total estimated income - Section 2	<u>(\$28,767,778)</u>
Total all funds - Section 2	<u>(\$3,201,303)</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 university system office and the various entities and institutions under the supervision of the board of higher education for the purpose of defraying the expenses of those entities and institutions, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE AND INSTITUTIONS

Capital assets	\$14,278,141
Competitive research program	5,190,000
Board initiatives	1,885,000
System governance	5,518,422
Title II	695,600
Common information services	20,563,093
Operations pool	388,559
Equity pool	2,000,000
Contingency and capital emergency	436,923
Professional liability insurance	1,350,000
Student financial assistance grants	3,504,402
Professional student exchange program	1,864,780
Scholars program	862,077
Native American scholarships	251,988
Education incentive programs	<u>1,227,902</u>
Total all funds	\$60,016,887
Less estimated income	<u>2,337,276</u>
Total general fund appropriation	\$57,679,611

Subdivision 2.

BISMARCK STATE COLLEGE

Operations	\$16,865,548
Capital assets	<u>746,281</u>
Total all funds	\$17,611,829
Less estimated income	<u>502,800</u>
Total general fund appropriation	\$17,109,029

Subdivision 3.

LAKE REGION STATE COLLEGE

Operations	\$5,389,989
Capital assets	<u>387,537</u>
Total general fund appropriation	\$5,777,526

Subdivision 4.

WILLISTON STATE COLLEGE

Operations	\$5,752,997
Capital assets	<u>8,136,475</u>
Total all funds	\$13,889,472
Less estimated income	<u>7,960,000</u>
Total general fund appropriation	\$5,929,472

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Operations	\$92,551,602
Capital assets	<u>56,700,545</u>

Total all funds	\$149,252,147
Less estimated income	<u>54,400,000</u>
Total general fund appropriation	\$94,852,147

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Operations	\$75,804,650
Capital assets	<u>1,692,226</u>
Total general fund appropriation	\$77,496,876

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Operations	\$24,986,828
Capital assets	<u>2,822,252</u>
Total all funds	\$27,809,080
Less estimated income	<u>2,068,920</u>
Total general fund appropriation	\$25,740,160

Subdivision 8.

DICKINSON STATE UNIVERSITY

Operations	\$14,711,627
Capital assets	<u>5,383,690</u>
Total all funds	\$20,095,317
Less estimated income	<u>5,000,000</u>
Total general fund appropriation	\$15,095,317

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Operations	\$9,003,630
Capital assets	<u>1,858,994</u>
Total all funds	\$10,862,624
Less estimated income	<u>1,500,000</u>
Total general fund appropriation	\$9,362,624

Subdivision 10.

MINOT STATE UNIVERSITY

Operations	\$27,215,849
Capital assets	<u>4,211,870</u>
Total all funds	\$31,427,719
Less estimated income	<u>3,535,000</u>
Total general fund appropriation	\$27,892,719

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Operations	\$11,806,526
Capital assets	<u>508,416</u>
Total general fund appropriation	\$12,314,942

Subdivision 12.

MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$4,334,460
Capital assets	<u>3,609,725</u>
Total all funds	\$7,944,185
Less estimated income	<u>3,500,000</u>
Total general fund appropriation	\$4,444,185

Subdivision 13.
UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH
SCIENCES

Operations	<u>\$31,361,002</u>
Total general fund appropriation	\$31,361,002

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Capital assets	\$101,638
Operations	<u>2,925,646</u>
Total all funds	\$3,027,284
Less estimated income	<u>975,001</u>
Total general fund appropriation	\$2,052,283
Total general fund appropriation - Section 3	\$387,107,893
Total estimated income appropriation - Section 3	\$81,778,997
Total all funds appropriation - Section 3	\$468,886,890
Grand total general fund appropriation - S.B. 2003	\$387,282,893
Grand total estimated income appropriation - S.B. 2003	\$165,121,497
Grand total all funds appropriation - S.B. 2003	\$552,404,390

SECTION 4. BOARD INITIATIVES. The sum of \$200,000 of the funding, included in the board initiatives line item in subdivision 1 of section 3 of this Act, must be used for a grant to the space grant consortium to match federal funds and the remainder of the funding may be used to support university system and statewide goals linked to the state board of higher education strategic plan and the higher education roundtable report, as determined by the board. The board shall consider using a substantial amount of funding for an international student initiative.

SECTION 5. CAPITAL ASSETS. The sum of \$14,278,141, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 3 of this Act, must be used by the state board of higher education, to satisfy outstanding bond obligations.

SECTION 6. OPERATIONS POOL. The sum of \$388,559, or so much of the sum as may be necessary, included in the operations pool line item in subdivision 1 of section 3 of this Act, is to be allocated for system priorities as determined by the state board of higher education.

SECTION 7. COMMON INFORMATION SERVICES. The sum of \$20,563,093, or so much of the sum as may be necessary, included in the common information services line item in subdivision 1 of section 3 of this Act, must be used for the benefit of the institutions and entities under the control of the state board of higher education, as determined by the board. Funding allocations are to be made based on the North Dakota university system information technology plan and technology priorities. Funds allocated pursuant to this section must be used to support the higher education computer network, the interactive video network, the on-line Dakota information network, and other related technology initiatives as determined by the board.

SECTION 8. CONTINGENCY AND CAPITAL EMERGENCY. The sum of \$436,923, or so much of the sum as may be necessary, included in the contingency and capital emergency line item in subdivision 1 of section 3 of this Act, must be used to meet unforeseen operations or capital asset needs and opportunities, as determined by the state board of higher education.

SECTION 9. EQUITY POOL - REPORT TO THE BUDGET SECTION. The sum of \$2,000,000, or so much of the sum as may be necessary, included in the equity pool line item in subdivision 1 of section 3 of this Act, must be used to address equity at higher education institutions and other campus needs as determined by the state board of higher education. The state board of higher education may not select a formula for distributing the equity funding until January 1, 2006. A representative of the board shall provide a report to the budget section regarding the allocation of the equity pool. Equity or parity funding allocations must be considered in the campus equity position for budgeting purposes.

SECTION 10. EDUCATION INCENTIVE PROGRAMS. The funding appropriated for education incentive programs in subdivision 1 of section 3 of this Act, may be allocated to education incentive programs as determined by the state board of higher education, including the reduction or elimination of specific programs, and the state board of higher education may determine the appropriate number of years of program eligibility for each education incentive program. The board may allocate up to \$150,000 of the funding for providing doctoral incentives to students at private baccalaureate degree-granting institutions.

SECTION 11. FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 3 of this Act, from federal, private, and other sources, received by the institutions and entities under the control of the state board of higher education are appropriated to those institutions and entities, for the biennium beginning July 1, 2005, and ending June 30, 2007. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2005, and ending June 30, 2007, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board and for student financial assistance grants. Twenty-three and one-half percent of the additional funds must be used for student financial assistance grants for students at private baccalaureate degree-granting institutions.

SECTION 12. TRANSFER AUTHORITY. If, during the biennium beginning July 1, 2005, and ending June 30, 2007, the state board of higher education determines that funds allocated to campus operations in section 3 of this Act are needed for capital projects or extraordinary repairs, the board may transfer funds from operations to capital assets. The board shall report any transfer of funds under this section to the office of management and budget.

SECTION 13. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. The state board of higher education is authorized to adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control. The university system shall report any adjustments to the office of management and budget before the submission of the 2007-09 biennium budget request.

SECTION 14. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION. The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of the projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this Act and ending June 30, 2007. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of the indebtedness. The evidences of indebtedness may be issued and the proceeds are

appropriated, for the biennium beginning July 1, 2005, and ending June 30, 2007, for the purpose of financing the following capital projects:

Bismarck state college - Residence hall	\$2,617,500
University of North Dakota - Dining center renovation	2,100,000
University of North Dakota - Parking ramp structure	19,000,000
University of North Dakota - University housing replacement	20,000,000
North Dakota state university - Wellness center addition	12,000,000
North Dakota state university - Memorial union renovation and addition	22,000,000
Minot state university - Crane hall renovation	<u>5,000,000</u>

Bismarck state college may obtain and utilize special funds to assist in the construction of a new residence hall. There is appropriated to Bismarck state college the sum of \$625,000, or so much of the sum as may be necessary, from any other funds that may become available for this project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Total special funds appropriation	\$83,342,500
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SECTION 15. NORTH DAKOTA STATE UNIVERSITY - COLLEGE OF BUSINESS BUILDING. The state board of higher education may enter into an agreement or agreements with the North Dakota state university foundation or other private entity and do all things necessary and proper to authorize construction by the foundation or other private entity of a college of business building on the North Dakota state university campus, using donations, gifts, or other private funds.

SECTION 16. MINOT STATE UNIVERSITY - CRANE HALL RENOVATION. The state board of higher education may enter into an agreement or agreements with a private vendor and do all things necessary and proper to authorize renovation and operation of crane hall on the Minot state university campus as a residence hall using auxiliary revenues.

SECTION 17. LEGISLATIVE INTENT - LONG-TERM FINANCE PLAN REVIEW - REPORT TO THE BUDGET SECTION. It is the intent of the fifty-ninth legislative assembly that the state board of higher education conduct a review of the long-term finance plan, including a review of peer institutions and a review of the allocation of funds between equity and parity within the plan, during the 2005-06 interim. A representative of the board shall periodically report to the appropriate committee of the legislative council and the budget section on the status of the review during the 2005-06 interim.

SECTION 18. LEGISLATIVE INTENT - NORTH DAKOTA UNIVERSITY SYSTEM - EXECUTIVE BUDGET RECOMMENDATION. It is the intent of the fifty-ninth legislative assembly that the office of the budget submit for introduction to the sixtieth legislative assembly the North Dakota university system appropriations bill for the 2007-09 biennium in the same format as approved by the fifty-ninth legislative assembly.

SECTION 19. NORTH DAKOTA STATE UNIVERSITY SPECIAL ASSESSMENT DISTRICT. The state board of higher education may authorize North Dakota state university to request of the city of Fargo creation of a \$1,025,000 special improvement district to finance necessary repairs and improvements to seventeenth avenue located on the North Dakota state university campus.

SECTION 20. LEGISLATIVE INTENT - HIGHER EDUCATION ACCOUNTABILITY MEASURES. It is the intent of the legislative assembly that the

board of higher education's performance and accountability report as required by section 15-10-14.2 include an executive summary and information regarding:

1. Education excellence, including:
 - a. Student performance on nationally recognized exams in their major fields compared to the national averages.
 - b. First-time licensure pass rates compared to other states.
 - c. Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities.
 - d. Employer-reported satisfaction with preparation of recently hired graduates.
 - e. Biennial report on employee satisfaction relating to the university system and local institutions.
 - f. Student graduation and retention rates.
2. Economic development, including:
 - a. Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.
 - b. Percentage of university system graduates obtaining employment appropriate to their education in the state.
 - c. Number of businesses and employees in the region receiving training.
3. Student access, including number and proportion of enrollments in courses offered by nontraditional methods.
4. Student affordability, including:
 - a. Tuition and fees on a per student basis compared to the regional average.
 - b. Tuition and fees as a percentage of median North Dakota household income.
 - c. Cost per student in terms of general fund appropriations and total university system funding.
 - d. Per capita general fund appropriations for higher education.
 - e. State general fund appropriation levels for university system institutions compared to peer institutions general fund appropriation levels.
5. Financial operations, including:
 - a. Cost per student and percentage distribution by major function.

- b. Ratio measuring the funding derived from operating and contributed income compared to total university system funding.
- c. Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt.
- d. Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity.
- e. Ratio measuring the amount of expendable fund balances divided by total expenditures and mandatory transfers.
- f. Ratio measuring net total revenues divided by total current revenues.

SECTION 21. BISMARCK STATE COLLEGE CAREER AND TECHNOLOGY INSTITUTE. The state board of higher education may enter an agreement or agreements with the Bismarck state college foundation or other private entity and do all things necessary and proper to authorize construction by the foundation or other private entity of a building on the Bismarck state college campus, using state funds, federal funds, donations, gifts, or other private funds.

SECTION 22. LEGISLATIVE INTENT - STUDENT EXCHANGE PROGRAMS. It is the intent of the fifty-ninth legislative assembly that the state board of higher education consider allowing related faculty members and practicing professionals in the related fields in the state to assist in the selection of students awarded funding through the student exchange program and consider investigating options of entering contracts with other higher education institutions for providing opportunities for students to complete professional fields of study not offered through the North Dakota university system, specifically other institutions granting professional degrees targeting critical shortages in large animal veterinary practice.

SECTION 23. LEGISLATIVE COUNCIL STUDY OF HIGHER EDUCATION FUNDING AND ACCOUNTABILITY. The legislative council shall consider studying, during the 2005-06 interim, higher education funding and accountability. If conducted, the study should include a review of the progress made in implementing the higher education roundtable recommendations relating to the university system meeting the state's expectations and needs, the funding methodology needed to meet these expectations and needs, and the appropriate accountability and reporting system for the North Dakota university system. The review should include an independent consultant's evaluation of:

- 1. The roundtable recommendations and the goals and objectives of the North Dakota university system;
- 2. The long-term financing plan for the North Dakota university system, including a review of the peer institutions selected and updated funding comparisons;
- 3. The North Dakota university system's prioritization of higher education funding, including the resource allocation mechanism addressing equity funding issues and the funding for initiatives at North Dakota's colleges and universities; and
- 4. The accountability mechanisms.

The study should be conducted and the consultant selected with input from the state board of higher education. The independent consultant selected to do the evaluation must possess a national reputation and experience in higher education governance and funding and management in multicampus public university systems and may not have been under contract with the state board of higher education during the previous five years.

The study may include the use of a higher education roundtable format.

The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 24. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$175,000, or so much of the sum as may be necessary, to the legislative council for the purpose of conducting the higher education study as provided for in this Act, for the biennium beginning July 1, 2005, and ending June 30, 2007. The legislative council may receive any other funds available for conducting the study and those funds are hereby appropriated.

SECTION 25. USE OF UNSPENT 2003-05 GENERAL FUND APPROPRIATIONS. The state board of higher education shall use \$250,000 of North Dakota university system office unspent 2003-05 biennium general fund appropriation authorized to continue under section 54-44.1-11 for capital asset needs at Valley City State University in the sum of \$150,000, including \$108,000 for brick tuck-pointing, \$10,000 for a sound system, and \$32,000 to replace special funds for the W. E. Osmon bleacher replacement project, and for internships at the North Dakota trade office in the sum of \$100,000 for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 26. AMENDMENT. Section 15-62.2-01 of the North Dakota Century Code is amended and reenacted as follows:

15-62.2-01. Student financial assistance and scholars programs - Establishment - Administrative responsibility. The North Dakota student financial assistance and scholars programs are established to provide grants or scholarships, or both, to assist the following students:

1. Resident undergraduate students pursuant to section 15-10-19.1.
2. North Dakota resident students who have attended and graduated from a high school in a bordering state pursuant to section 15-40.2-10, who are attending qualified institutions of postsecondary education within North Dakota.
3. North Dakota resident students who, because of physical or mental handicap as certified by a physician, are attending postsecondary institutions out of state due to the lack of special services or facilities, or both, necessary to meet the postsecondary educational needs of the handicapped students within North Dakota.
4. Scholars who qualify and are selected for scholarships pursuant to sections 15-62.2-00.1 and 15-62.2-03.1 through 15-62.2-03.5.

A student must be in substantial need of financial assistance to receive grants under the student financial assistance program. The state board of higher education shall administer the student financial assistance program and the scholars program. At least twenty-three and one-half percent of the funds appropriated for the student financial assistance program must be allocated to students at private baccalaureate degree-granting institutions with the remaining funds allocated to students at public and American Indian institutions.

SECTION 27. EMERGENCY. The capital assets, professional student exchange program, and contingency and capital emergency line items contained in section 3 of this Act and sections 14, 15, and 19 of this Act are declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 32**SENATE BILL NO. 2004**

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

STATE DEPARTMENT OF HEALTH

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to create and enact a new subsection to section 23-01-05 of the North Dakota Century Code, relating to the state health officer's duty to establish an environmental review process for commercial buildings; to amend and reenact subsection 1 of section 19-02.1-24, section 19-08-04, subsections 5 and 8 of section 23-09-01, and sections 23-09-16, 23-09-24, 23-09.1-02.2, and 23-10-03 of the North Dakota Century Code, relating to licensure of food vending machines, beverage sales, food and lodging establishments, assisted living facilities, pushcarts, mobile food units, salvaged food distributors, bed and breakfasts, mobile home parks, trailer parks, and campgrounds; to repeal sections 19-08-05, 23-09-17, 23-09.1-03, and 23-10-05 of the North Dakota Century Code, relating to license fee amounts for beverage sales, food and lodging establishments, mobile food units, pushcarts, bed and breakfasts, mobile home parks, trailer parks, and campgrounds; to provide for a report to the legislative council; to provide legislative intent; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state department of health in section 3 of this Act as follows:

Salaries and wages	\$29,972,929
Operating expenses	24,151,257
Capital assets	3,204,837
Grants	36,690,628
Tobacco prevention and control	7,783,097
WIC food payments	17,680,000
Community health advisory	100,000
Total all funds - Base level	\$119,582,748
Less estimated income - Base level	<u>106,481,656</u>
Total general fund - Base level	\$13,101,092

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state department of health which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$2,080,994
Operating expenses	1,462,724
Capital assets	(1,690,368)
Grants	5,111,538
Tobacco prevention and control	902,898
WIC food payments	(1,930,000)
Community health advisory	<u>(100,000)</u>

Total all funds - Adjustments/enhancements	\$5,837,786
Less estimated income - Adjustments/enhancements	<u>5,602,356</u>
Total general fund - Adjustments/enhancements	<u>\$235,430</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$32,053,923
Operating expenses	25,613,981
Capital assets	1,514,469
Grants	41,802,166
Tobacco prevention and control	8,685,995
WIC food payments	<u>15,750,000</u>
Total all funds	\$125,420,534
Less estimated income	<u>112,084,012</u>
Total general fund appropriation	<u>\$13,336,522</u>

SECTION 4. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 3 of this Act includes \$250,000, 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, 2005, and ending June 30, 2007.

SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 3 of this Act includes \$252,808, 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, 2005, and ending June 30, 2007. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 6. DOMESTIC VIOLENCE PREVENTION FUND. The estimated income line item included in section 3 of this Act includes \$340,000, or so much of the sum as may be necessary, to be made available to the state department of health from the domestic violence prevention fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND. The estimated income line item included in section 3 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, 2005, and ending June 30, 2007.

SECTION 8. WASTEWATER OPERATORS CERTIFICATION FUND. The estimated income line item included in section 3 of this Act includes \$21,214, 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, 2005, and ending June 30, 2007.

SECTION 9. COMMUNITY HEALTH TRUST FUND. The estimated income line item included in section 3 of this Act includes \$6,610,000, or so much of the sum

as may be necessary, to be made available to the state department of health from the community health trust fund, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 10. INTENT - INDIRECT COST RECOVERIES. Notwithstanding section 54-44.1-14, the state department of health may deposit indirect cost recoveries in its operating account.

SECTION 11. AMENDMENT. Subsection 1 of section 19-02.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No An establishment may not sell any type of prepackaged food from a food vending machine without first obtaining a license from the department. A license may be issued upon payment of a fee of fifteen dollars annually. The license expires on June thirtieth of each year. The department may adopt rules establishing the amount and the procedures for the collection of license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.~~

SECTION 12. AMENDMENT. Section 19-08-04 of the North Dakota Century Code is amended and reenacted as follows:

19-08-04. License required. The department may, ~~in its discretion,~~ require manufacturers, importers, jobbers, or other retailers to furnish suitable samples to the department for inspection and chemical analysis. If any beverage does not meet all requirements of law, the department shall refuse to license ~~it~~ the beverage and shall prevent ~~its sale of the beverage.~~ The license fee must be paid annually during the month of December or ~~prior to~~ before placing the beverage on the market. The license expires December thirty-first next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser may be required to secure a license for a product prepared for the dispenser's own use from a product already licensed. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 13. A new subsection to section 23-01-05 of the North Dakota Century Code is created and enacted as follows:

- a. Establish a review process for instances in which the department is requested to conduct an epidemiological assessment of a commercial building. The epidemiological assessment must include:
 - (1) A statement of whether there are known environmental causes;
 - (2) If there are known environmental causes identified, a recommendation of how they can be remediated or mitigated; and

(3) If there are no known environmental causes identified, a statement that no known causes exist.

- b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

³² **SECTION 14. AMENDMENT.** Subsections 5 and 8 of section 23-09-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "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, school, child care, 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.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to ~~four or more~~ transient guests. 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 50-32-01.

SECTION 15. AMENDMENT. Section 23-09-16 of the North Dakota Century Code is amended and reenacted as follows:

23-09-16. License - Application. Before any food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food establishment, lodging establishment, or assisted living facility licensed by a city or district health unit if the local health unit's sanitation, safety, and inspection rules are approved by the department. Application for license must be made to the department during December of every year, or before the operating of the food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility, as the case may be. 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. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility 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. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. The fees must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, and necessary enforcement action. License fees collected pursuant to this section must be deposited in the department's operating

³² Section 23-09-01 was also amended by section 1 of House Bill No. 1147, chapter 437.

fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 16. AMENDMENT. Section 23-09-24 of the North Dakota Century Code is amended and reenacted as follows:

23-09-24. Salvaged food - License required. It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under ~~section 23-09-17~~ this chapter authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees under this section. License fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23-09.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

23-09.1-02.2. License required - Application - Issuance. Before any bed and breakfast facility may operate in this state ~~it~~, the facility must be licensed by the department. Licenses expire on December thirty-first following the date of issuance unless canceled by failure to comply with this chapter or with any of the rules adopted ~~under~~ to implement this chapter. Renewal application for license must be made to the department during December of every year. A license must be issued upon compliance by the applicant with provisions of this chapter and any rules adopted ~~under~~ to implement this chapter. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. Licenses issued by the department are not transferable nor applicable to any premises other than those for which the license was issued. The department may adopt rules establishing the amount of and the procedures for the collection of annual license fees. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 18. AMENDMENT. Section 23-10-03 of the North Dakota Century Code is amended and reenacted as follows:

23-10-03. License required - Application. ~~No~~ A person may not establish, maintain, or enlarge a mobile home park, trailer park, or campground in this state without first obtaining a license from the department. The application for the license must be made in writing to the department and must state the location and type of the mobile home park, trailer park, or campground, the proposed water supply, the proposed method of sewerage and garbage disposal, and such other information as may be required by the department. Application forms must be prepared by the department and distributed upon request. 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. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. License fees collected pursuant to this section

must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 19. REPEAL. Sections 19-08-05, 23-09-17, 23-09.1-03, and 23-10-05 of the North Dakota Century Code are repealed.

SECTION 20. LEGISLATIVE COUNCIL STUDY - HEALTHY NORTH DAKOTA PROGRAM. The legislative council shall consider studying, during the 2005-06 interim, the costs and benefits of adopting a comprehensive healthy North Dakota and workplace wellness program in collaboration with the state department of health, health insurers and other third-party payers, workforce safety and insurance, interested nonprofit health-related agencies, and others who have an interest in establishing accident and disease prevention programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 21. LEGISLATIVE COUNCIL STUDY - PUBLIC HEALTH INFRASTRUCTURE AND FOOD AND LODGING INSPECTIONS. The legislative council shall study, during the 2005-06 interim, the state's public health unit infrastructure and the ability of the public health units to respond to public health issues. The study must include an assessment of the efficiency of operations, given the personnel and financial resources available, and the effectiveness of services, given the lines of governmental authority of the current infrastructure. The study must include the efficiency of the food and lodging investigation services provided by the state department of health and the public health units and must develop a plan maximizing efficiencies through a coordinated system and fee structure. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 22. LEGISLATIVE COUNCIL STUDY - TOBACCO SETTLEMENT COLLECTIONS. The legislative council shall consider studying, during the 2005-06 interim, whether to change guidelines for funding programs as a result of additional tobacco settlement collections that are anticipated to be received and deposited in the community health trust fund from 2008 through 2017. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 23. LEGISLATIVE INTENT - WORKSITE WELLNESS PILOT PROJECT. It is the intent of the fifty-ninth legislative assembly that the state department of health may use federal funding to match nonstate funding and contract with a nonstate entity for a worksite wellness pilot project during the 2005-07 biennium. The state department of health shall provide a report on the pilot project to the sixtieth legislative assembly.

SECTION 24. LEGISLATIVE INTENT - FUNDING FOR ABSTINENCE PROGRAMS. It is the intent of the fifty-ninth legislative assembly that the state department of health pursue \$220,000 for abstinence programs from federal grants or other sources and that the new funding be in addition to existing funding for abstinence programs.

SECTION 25. LEGISLATIVE INTENT - FEDERAL BIOTERRORISM FUNDING. It is the intent of the fifty-ninth legislative assembly that the full-time equivalent employee positions funded with federal bioterrorism grants be discontinued when the funding for the programs ends.

SECTION 26. BASIC CARE SURVEY PILOT PROJECT - LEGISLATIVE COUNCIL REPORT. The state department of health shall develop a pilot project to test an announced basic care survey process. The pilot project must begin with fifty percent of the state-licensed basic care providers surveyed receiving an announced survey and the remaining receiving an unannounced survey. The state department of health shall evaluate the survey pilot project and submit a report to the legislative council during the 2005-06 interim. The report must include a recommendation of whether the unannounced survey process should continue for all basic care facilities. The pilot project must include standard basic care surveys and all complaint investigations must be unannounced.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 33

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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the Indian affairs commission in section 3 of this Act as follows:

Salaries and wages	\$314,311
Operating expenses	<u>40,932</u>
Total general fund - Base level	\$355,243

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the Indian affairs commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$26,259
Operating expenses	<u>22,963</u>
Total all funds - Adjustments/enhancements	\$49,222
Less estimated income - Adjustments/enhancements	<u>20,000</u>
Total general fund - Adjustments/enhancements	\$29,222

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$340,570
Operating expenses	<u>63,895</u>
Total all funds	\$404,465
Less estimated income	<u>20,000</u>
Total general fund appropriation	\$384,465

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 34

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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the aeronautics commission in section 3 of this Act as follows:

Salaries and wages	\$674,424
Operating expenses	1,831,368
Capital assets	134,000
Grants	6,520,000
Total all funds - Base level	\$9,159,792
Less estimated income - Base level	<u>8,637,292</u>
Total general fund - Base level	<u>\$522,500</u>

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified this section represent the funding adjustments or enhancements to the base funding level for the aeronautics commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$35,878
Operating expenses	61,338
Grants	(3,472,500)
Total all funds - Adjustments/enhancements	(\$3,375,284)
Less estimated income - Adjustments/enhancements	<u>(3,402,971)</u>
Total general fund - Adjustments/enhancements	<u>\$27,687</u>

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 aeronautics commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$710,302
Operating expenses	1,892,706
Capital assets	134,000
Grants	<u>3,047,500</u>
Total all funds	\$5,784,508
Less estimated income	<u>5,234,321</u>
Total general fund appropriation	\$550,187

Approved April 4, 2005

Filed April 4, 2005

CHAPTER 35

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the veterans' home and department of veterans' affairs in section 3 of this Act as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$7,975,737
Operating expenses	2,711,704
Capital assets	<u>329,754</u>
Total all funds - Base level	\$11,017,195
Less estimated income - Base level	<u>7,971,123</u>
Total general fund - Base level	\$3,046,072

Subdivision 2.

VETERANS' AFFAIRS

Total all funds - Base level	\$524,292
Less estimated income - Base level	<u>43,494</u>
Total general fund - Base level	\$480,798
Total general fund - Section 1	\$3,526,870
Total special funds - Section 1	\$8,014,617
Total all funds - Section 1	\$11,541,487

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the veterans' home and department of veterans' affairs which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	(\$247,032)
Operating expenses	463,074
Capital assets	<u>20,852</u>
Total all funds - Adjustments/enhancements	\$236,894
Less estimated income - Adjustments/enhancements	<u>(996,290)</u>
Total general fund - Adjustments/enhancements	\$1,233,184

Subdivision 2.

VETERANS' AFFAIRS

Total all funds	\$125,291
Less estimated income	<u>(43,494)</u>
Total general fund - Adjustments/enhancements	\$168,785
Total general fund - Section 2	\$1,401,969
Total special funds - Section 2	(\$1,039,784)
Total all funds - Section 2	\$362,185

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 department of veterans' affairs for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$7,728,705
Operating expenses	3,174,778
Capital assets	<u>350,606</u>
Total all funds	\$11,254,089
Less estimated income	<u>6,974,833</u>
Total general fund appropriation	\$4,279,256

Subdivision 2.

VETERANS' AFFAIRS

Veterans' affairs	\$649,583
Total general fund appropriation	\$649,583
Grand total general fund appropriation - S.B. 2007	\$4,928,839
Grand total special funds appropriation - S.B. 2007	\$6,974,833
Grand total all funds appropriation - S.B. 2007	\$11,903,672

SECTION 4. LEGISLATIVE INTENT - VETERANS' HOME STAFFING POLICY. It is the intent of the fifty-ninth legislative assembly that the veterans' home review its policy of staffing for basic care services, including the number of licensed practical nurses as compared to certified nurse assistants scheduled for each shift, and to present a report to the appropriations committees of the sixtieth legislative assembly during the agency's budget presentation regarding justification for the staffing policy and information on savings that may be realized from changes in the policy.

Approved April 25, 2005
 Filed April 26, 2005

CHAPTER 36**SENATE BILL NO. 2008**

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

DEPARTMENT OF FINANCIAL INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of financial institutions in section 3 of this Act as follows:

Salaries and wages	\$2,984,539
Operating expenses	672,726
Total special funds - Base level	\$3,657,265

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of financial institutions which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$398,782
Operating expenses	107,087
Capital assets	7,500
Contingency	20,000
Total special funds - Adjustments/enhancements	\$533,369

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of financial institutions for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$3,383,321
Operating expenses	779,813
Capital assets	7,500
Contingency	20,000
Total special funds appropriation	\$4,190,634

SECTION 4. CONTINGENT APPROPRIATION. If Senate Bill No. 2195 is approved by the fifty-ninth legislative assembly, the department of financial institutions is appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, the amount of \$32,169, or so much of that amount as is necessary, for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 37**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 amend and reenact section 4-02.1-09 of the North Dakota Century Code, relating to compensation of state fair board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state fair association in section 3 of this Act as follows:

Capital assets	\$210,000
Premiums	<u>391,750</u>
Total all funds - Base level	\$601,750
Less estimated income - Base level	<u>20,000</u>
Total general fund - Base level	\$581,750

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state fair association which are included in the appropriation in section 3 of this Act as follows:

Premiums	\$13,250
Total all funds - Adjustments/enhancements	<u>\$13,250</u>
Less estimated income - Adjustments/enhancements	<u>(20,000)</u>
Total general fund - Adjustments/enhancements	\$33,250

SECTION 3. APPROPRIATION FOR THE STATE FAIR ASSOCIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Capital assets	\$210,000
Premiums	<u>405,000</u>
Total general fund	\$615,000

SECTION 4. AMENDMENT. Section 4-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-09. Vacancies and special compensation of board members. Any vacancy occurring on the board of directors must be filled by the board of directors for the unexpired term of the vacancy. ~~The board of directors may not receive any salary for their services; but, by resolution of the board, per diem payments of ten dollars and travel expenses not exceeding such amounts as allowed other state officials and employees, may be allowed for attendance at each regular or special meeting of the board or members.~~ The board of directors has the power, in its discretion, ~~to~~ may contract for and ~~to~~ pay directors rendering unusual or exceptional services to the association, special compensation appropriate to the value of such services.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 38

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; to provide an appropriation from the cultural endowment fund; to amend and reenact sections 21-10-06, 54-54-04, and 54-54-08.2 of the North Dakota Century Code, relating to funds under the management of the state investment board, employees of the council on the arts, and to the cultural endowment fund; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the council on the arts in section 3 of this Act as follows:

Salaries and wages	\$425,568
Operating expenses	221,443
Grants	1,415,857
Lewis and Clark bicentennial	<u>163,750</u>
Total all funds - Base level	\$2,226,618
Less estimated income - Base level	<u>1,222,215</u>
Total general fund - Base level	\$1,004,403

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the council on the arts which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$26,184
Operating expenses	6,543
Grants	60,400
Lewis and Clark bicentennial	<u>(55,450)</u>
Total all funds - Adjustments/enhancements	\$37,677
Less estimated income - Adjustments/enhancements	<u>46,103</u>
Total general fund - Adjustments/enhancements	(\$8,426)

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$451,752
Operating expenses	227,986
Grants	1,476,257
Lewis and Clark bicentennial	<u>108,300</u>
Total all funds	\$2,264,295

Less estimated income	<u>1,268,318</u>
Total general fund appropriation	<u>\$995,977</u>

SECTION 4. APPROPRIATION. All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. AMENDMENT. Section 21-10-06 of 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. Workforce safety and insurance fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. Veterans' cemetery trust fund.
10. Health care trust fund.
11. Cultural endowment 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 may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

SECTION 6. AMENDMENT. Section 54-54-04 of the North Dakota Century Code is amended and reenacted as follows:

54-54-04. Other employees - Appointment - Compensation. The chairman with the approval of the council may employ such officers, experts, and other employees as may be needed to carry out the provisions of this chapter. ~~Such persons~~ The executive director shall serve at the pleasure of the chairman and the chairman shall fix ~~their~~ the compensation of the executive director.

SECTION 7. AMENDMENT. Section 54-54-08.2 of the North Dakota Century Code is amended and reenacted as follows:

54-54-08.2. Cultural endowments - Limitations. The Investment of the cultural endowment fund must be maintained by the Bank of North Dakota which is also responsible for the investment of the principal moneys deposited in such fund under the supervision of the state investment board in accordance with chapter 21-10. Funds will be expended from the cultural endowment fund only to the limits of accrued interest on state general fund appropriations and other public and private funds received. The expenditure of endowment funds must occur at the direction of the North Dakota council on the arts. The council may seek the counsel and assistance of a group or groups of private citizens of the council's choosing to aid it in arriving at expenditure decisions when private funds are involved. Section 54-54-06 applies to private donations to the cultural endowment fund; provided, that gifts, donations, and bequests can be dedicated as principal of the fund in perpetuity or for a term of years, in which case only the income earned as a result of investment of those funds can be expended pursuant to section 54-54-08.1 and this section.

SECTION 8. LEGISLATIVE INTENT - INVESTMENT OF THE CULTURAL ENDOWMENT FUND. It is the intent of the fifty-ninth legislative assembly that the council on the arts, in cooperation with the state investment board, determine the asset mix and risk for investing the assets of the cultural endowment fund under the management of the state investment board.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 39

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the highway patrol in section 3 of this Act as follows:

Administration	\$2,241,434
Field operations	30,434,831
Law enforcement training academy	<u>1,016,344</u>
Total all funds - Base level	\$33,692,609
Less estimated income - Base level	<u>15,481,087</u>
Total general fund - Base level	\$18,211,522

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the highway patrol which are included in the appropriation in section 3 of this Act as follows:

Administration	\$103,906
Field operations	406,680
Law enforcement training academy	<u>38,219</u>
Total all funds - Adjustments/enhancement	\$548,805
Less estimated income - Adjustments/enhancements	<u>(747,802)</u>
Total general fund - Adjustments/enhancements	\$1,296,607

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Administration	\$2,345,340
Field operations	30,841,511
Law enforcement training academy	<u>1,054,563</u>
Total all funds	\$34,241,414
Less estimated income	<u>14,733,285</u>
Total general fund appropriation	\$19,508,129

SECTION 4. SPECIAL FUNDS TRANSFER. The less estimated income line item in section 3 of this Act includes the sum of \$7,516,175, or so much of the sum as may be necessary, from the state highway tax distribution fund which 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, 2005, and ending June 30, 2007.

SECTION 5. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 3 of this Act an amount not to exceed one hundred seventy dollars per month for the biennium beginning July 1, 2005, and ending June 30, 2007. 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 at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 40

SENATE BILL NO. 2012

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

DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to create and enact a new section to chapter 24-01, section 24-02-40.1, a new section to chapter 24-08, and section 57-43.1-03.2 of the North Dakota Century Code, relating to the highway performance classification plan, grant or revenue anticipation financing by the department of transportation, naming of the liberty memorial bridge, and refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 24-01-03, 24-01-51, 39-04-19, 57-40.3-10, 57-43.1-02, and 57-43.2-02 of the North Dakota Century Code, relating to highway and bridge maintenance, haying of no-mow areas, motor vehicle registration fees, motor vehicle excise tax revenue, and motor vehicle fuels and special fuels tax rates; to repeal section 39-04-39.5 of the North Dakota Century Code, relating to allocation of motor vehicle registration fees; and to provide an effective date; and to provide a contingent expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of transportation in section 3 of this Act as follows:

Salaries and wages	\$105,222,404
Operating expenses	122,902,369
Capital assets	512,175,642
Grants	44,085,503
Total special funds - Base level	\$784,385,918

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of transportation which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	(\$105,222,404)
Operating expenses	(122,902,369)
Capital assets	(512,175,642)
Grants	(44,085,503)
Administration	27,174,242
Driver's and vehicle services	20,035,352
Highways	863,644,411
Fleet services	<u>43,268,038</u>
Total special funds - Adjustments/enhancements	\$169,736,125

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the department of transportation for the

purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Administration	\$27,174,242
Driver's and vehicle services	20,035,352
Highways	863,644,411
Fleet services	<u>43,268,038</u>
Total special funds appropriation	\$954,122,043

SECTION 4. FULL-TIME EQUIVALENT EMPLOYEES. The department of transportation is authorized to hire additional full-time equivalent positions for highway construction in addition to those authorized by the legislative assembly when it is cost-effective to hire additional positions for construction and maintenance of highways in lieu of entering into contracts for these purposes. The department of transportation shall notify the office of management and budget and report to the legislative council the additional full-time equivalent positions hired.

SECTION 5. AMENDMENT. Section 24-01-03 of the North Dakota Century Code is amended and reenacted as follows:

24-01-03. Responsibility for state highway system. The director is responsible for the construction, maintenance, and operation of the state highway system and ~~is authorized to~~ may enter into a cooperative agreement with any municipality for the construction, maintenance, or repair of any urban connecting street. The director may not divest the state from responsibility for maintaining the structural integrity of any bridge over a navigable water of this state which is currently maintained by the state unless an agreement is reached with the municipality.

The jurisdiction, control, and duty of the state and municipality with respect to such urban connecting streets must be as follows:

1. The director has no authority to change or establish any grade of any such street without approval of the governing body of such municipality.
2. The municipality shall maintain at its own expense ~~maintain~~ all underground facilities in such streets and has the right to construct such additional underground facilities as may be necessary in such streets.
3. The municipality has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby must ~~promptly~~ be repaired promptly by said municipality at its direction and without cost to the department.
4. The municipality has exclusive right to grant franchises over, beneath, and upon such streets.

SECTION 6. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Highway performance classification plan. To the extent possible, the department of transportation shall implement the highway performance classification plan.

SECTION 7. AMENDMENT. Section 24-01-51 of the North Dakota Century Code is amended and reenacted as follows:

24-01-51. (Effective January 1, 2006 2008) Haying of no-mow areas.

Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth without any payment or penalty.

SECTION 8. Section 24-02-40.1 of the North Dakota Century Code is created and enacted as follows:

24-02-40.1. Grant or revenue anticipation financing. Notwithstanding any other provision of law, the department, whenever needed for the liberty memorial bridge improvement project and the United States highway 2 project improvements, may arrange with any state-owned or private financing agency or underwriter, including the Bank of North Dakota, grant or revenue anticipation financing through the issuance of evidences of indebtedness on such terms and conditions as the department determines if construction funds on hand are insufficient to meet current obligations or to achieve cost-savings or efficiencies in road construction. The department may refund the evidences of indebtedness as often as it is advantageous to do so. Evidences of indebtedness may be sold at public or private sale and must mature not more than fifteen years from their date or dates, and the proceeds of the sale may be invested on such terms and conditions as the department determines. Grant or revenue anticipation financing must be in amounts no larger than can be repaid from moneys known or reasonably anticipated to be due and forthcoming. The grant or revenue anticipation financing may not be used in anticipation of increased federal aid highway grants or increased state highway user revenue funds, and the financing may not be obligated for road construction that cannot be financed from known sources of grants or revenue. The department may pledge any federal aid grants received or to be received for debt service and related issuance costs for evidences of indebtedness issued under this section directly to a trustee in trust for payment to holders of the evidences of indebtedness. The department may also pledge any biennially appropriated revenues for debt service on the evidences of indebtedness directly to a trustee in trust for payment to holders of the evidences of indebtedness. Any evidences of indebtedness issued under this section are not general obligations or debt of the state, the department, or any public officer or employee of the department or this state. The principal of and interest on the evidences of indebtedness are limited obligations payable solely from grants or revenues received or to be received by the department. The department may capitalize from proceeds of the evidences of indebtedness all expenses incidental to issuing the evidences of indebtedness, including any reserves for payment of the evidences of indebtedness.

SECTION 9. A new section to chapter 24-08 of the North Dakota Century Code is created and enacted as follows:

Liberty memorial bridge. A bridge replacing the bridge between Mandan and Bismarck presently known as the liberty memorial bridge is designated the liberty memorial bridge upon the completion of the replacement bridge.

SECTION 10. AMENDMENT. Section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

39-04-19. Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars

for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.

2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:

a. Passenger motor vehicles:

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th, 11th, and 12th Years	13th and Subsequent Years
Less than 3,200	\$60 \$70	\$52 \$62	\$44 \$54	\$36 \$46
3,200 - 4,499	80 90	68 78	66 66	44 54
4,500 - 4,999	98 108	84 91	66 76	60 60
5,000 - 5,999	120 139	107 117	85 95	63 73
6,000 - 6,999	162 172	123 143	104 114	76 86
7,000 - 7,999	195 205	150 169	124 134	89 99
8,000 - 8,999	228 238	186 196	144 154	102 112
9,000 and over	264 271	242 222	164 174	146 125

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

A pickup truck is subject to registration at the rates prescribed for other vehicles under this subdivision by applying the shipping weight of the vehicle to the fee schedule. At a minimum, the registered gross weight displayed on the registration card for a pickup truck must be twice the shipping weight of the vehicle. Unless otherwise exempted by this chapter, the owner of a pickup truck shall request the registered gross weight of the pickup truck be increased to ensure the registered gross weight is sufficient to include the total weight of the vehicle and any load transported on or by the vehicle. For purposes of this subdivision, a pickup truck is a motor vehicle with a manufacturer's gross vehicle weight rating of less than eleven thousand five hundred pounds [5216.31 kilograms], with an unladen weight of less than eight thousand pounds [3628.74 kilograms], and which is equipped with an open box-type bed not exceeding nine feet [2.74 meters] in length.

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under this subsection or subsection 5:

YEARS REGISTERED

Gross Weights	1st Through 6th Years	7th Through 9th Years	10th Through 12th Years	13th Through 19th Years	20th and Subsequent Years
Not over 4,000	\$58 \$68	\$45 \$55	\$40 \$50	\$37 \$47	\$36 \$46
4,001 - 6,000	62 73	50 60	44 54	38 48	37 47
6,001 - 8,000	68 78	55 65	48 58	39 49	38 48
8,001 - 10,000	72 83	60 70	52 62	44 51	40 50
10,001 - 12,000	78 88	65 75	56 66	43 53	42 52
12,001 - 14,000	82 93	70 80	60 70	46 56	46 55
14,001 - 16,000	88 98	75 85	64 74	49 59	48 58
16,001 - 18,000	92 103	80 90	68 78	51 61	50 60
18,001 - 20,000	96 106	82 93	70 80	52 62	51 61

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years	8th, 9th, 10th, 11th, and 12th Years	13th and Subsequent Years
20,001 - 22,000	\$126 \$136	\$100 \$110	\$87 \$97
22,001 - 26,000	178 188	148 158	132 142
26,001 - 30,000	230 249	197 207	175 185
30,001 - 34,000	305 315	250 260	222 232
34,001 - 38,000	366 376	299 309	265 275
38,001 - 42,000	427 437	348 358	307 317
42,001 - 46,000	488 498	396 406	350 360
46,001 - 50,000	549 559	445 455	393 403
50,001 - 54,000	610 629	503 513	444 454
54,001 - 58,000	680 690	562 562	487 497
58,001 - 62,000	742 752	604 611	530 540
62,001 - 66,000	802 812	649 659	573 583
66,001 - 70,000	863 873	698 708	615 625
70,001 - 74,000	924 934	747 757	658 668
74,001 - 78,000	986 995	796 806	701 711
78,001 - 82,000	1,046 1,056	845 855	744 754
82,001 - 86,000	1,109 1,179	900 960	804 841
86,001 - 90,000	1,204 1,301	1,054 1,064	918 928
90,001 - 94,000	1,413 1,423	1,159 1,169	1,005 1,015
94,001 - 98,000	1,536 1,545	1,264 1,274	1,093 1,103
98,001 - 102,000	1,657 1,667	1,368 1,378	1,180 1,190
102,001 - 105,500	1,779 1,789	1,473 1,483	1,267 1,277

- c. Notwithstanding the fees provided by subdivision a of subsection 2, only one-half of the increase in registration fees, rounded up to the nearest dollar, resulting from the reclassification of pickup trucks in 2005 from subdivision b of subsection 2 to subdivision a of subsection 2 is effective from July 1, 2005, through June 30, 2007.
- d. Motorcycles, fifteen dollars.
- Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 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.
 - Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars. Upon the request of a person with a trailer or farm trailer to whom a registration or identification plate is provided under this subsection, the department

shall provide a plate of the same size as provided for a motorcycle. The department shall provide notification of this option to the person before the replacement or issuance of the plate.

5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
20,001 - 22,000	\$98 \$108	\$84 \$94	\$70 \$80	\$52 \$62
22,001 - 24,000	103 113	88 98	73 83	64 64
24,001 - 26,000	111 121	94 104	77 87	66 66
26,001 - 28,000	122 132	102 112	83 93	69 70
28,001 - 30,000	141 141	110 120	89 99	64 74
30,001 - 32,000	146 156	123 133	100 110	73 83
32,001 - 34,000	166 166	141 141	106 116	77 87
34,001 - 36,000	166 176	149 149	112 122	84 91
36,001 - 38,000	186 186	157 157	118 128	85 95
38,001 - 40,000	196 196	165 165	124 134	89 99
40,001 - 42,000	206 206	173 173	130 140	93 103
42,001 - 44,000	216 216	181 181	136 146	97 107
44,001 - 46,000	226 226	189 189	142 152	101 111
46,001 - 48,000	236 236	197 197	148 158	106 115
48,001 - 50,000	246 246	205 205	154 164	109 119
50,001 - 52,000	256 256	213 223	160 180	123 133
52,001 - 54,000	266 276	221 231	166 186	127 137
54,001 - 56,000	286 286	229 239	182 192	131 141
56,001 - 58,000	296 296	237 247	188 198	136 145
58,001 - 60,000	306 306	245 255	194 204	139 149
60,001 - 62,000	316 316	253 263	200 210	143 153
62,001 - 64,000	326 326	261 271	206 216	147 157
64,001 - 66,000	336 336	269 279	212 222	151 161
66,001 - 68,000	346 346	277 287	218 228	156 165
68,001 - 70,000	356 356	285 295	224 234	160 169
70,001 - 72,000	366 366	293 303	230 240	163 173
72,001 - 74,000	376 376	301 311	236 246	167 177
74,001 - 76,000	386 386	309 319	242 252	171 181
76,001 - 78,000	396 396	317 327	248 258	175 185
78,001 - 80,000	406 406	325 335	254 264	179 189
80,001 - 82,000	416 416	333 343	260 270	183 193
82,001 - 84,000	426 426	341 351	266 276	187 197
84,001 - 86,000	436 436	349 359	272 282	191 201
86,001 - 88,000	446 446	357 367	278 288	195 205
88,001 - 90,000	456 456	365 375	284 294	199 209
90,001 - 92,000	466 466	373 383	290 300	203 213
92,001 - 94,000	476 476	381 391	296 306	207 217
94,001 - 96,000	486 486	389 399	302 312	211 221
96,001 - 98,000	496 496	397 407	308 318	215 225
98,001 - 100,000	506 506	405 415	314 324	219 229
100,001 - 102,000	516 516	413 423	320 330	223 233
102,001 - 104,000	526 526	421 431	326 336	227 237
104,001 - 105,500	536 536	429 439	332 342	231 241

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.
7. Thirteen dollars of each registration fee collected under subsections 2 and 5 must be deposited in the state highway fund.

³³ **SECTION 11. AMENDMENT.** Section 57-40.3-10 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-10. Transfer of revenue. All moneys collected and received under this chapter must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited to the general fund, as follows:

1. The first one hundred fifty million dollars received during a biennium must be deposited in the state general fund.
2. The first thirty-seven million five hundred thousand dollars received during a biennium exceeding the amount allocated under subsection 1 must be deposited in the state highway fund.
3. Amounts received in excess of the amount allocated under subsections 1 and 2 must be allocated eighty percent to the state general fund and twenty percent to the state highway fund.

³⁴ **SECTION 12. 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 ~~twenty-one~~ twenty-three cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. A supplier or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.
3. The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

³³ Section 11 was vetoed by the Governor, see chapter 618.

³⁴ Section 57-43.1-02 was also amended by section 2 of House Bill No. 1478, chapter 584.

5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 13. Section 57-43.1-03.2 of the North Dakota Century Code is created and enacted as follows:

57-43.1-03.2. Refund of tax for fuel purchased by native Americans - Fuels tax refund reserve fund - Continuing appropriation.

1. A native American may file a claim with the tax commissioner for a refund of motor vehicle fuel taxes paid by that person under this chapter or special fuel taxes paid under chapter 57-43.2 if the motor vehicle fuel or special fuel was purchased from a retail fuel dealer located on the Indian reservation where the native American is an enrolled member and the fuel was delivered to the native American on that reservation. The refund provisions of this chapter apply to refund claims made under this section.
2. A fuels tax refund reserve fund is created as a special fund in the state treasury. The tax commissioner shall deposit in that fund such amounts from motor vehicle fuel tax and special fuel tax collections as the attorney general determines necessary to be expended for refunds to which native American government entities may be entitled under qualifying circumstances and conditions determined by the attorney general. There is appropriated as a continuing appropriation out of funds set aside under this subsection so much of the funds as the attorney general determines is necessary to meet the expenditures authorized under this subsection and such funds may be expended for that purpose.

³⁵ **SECTION 14. AMENDMENT.** Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date - See note - Effective through June 30, 2005) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section,

³⁵ Section 57-43.2-02 was also amended by section 6 of Senate Bill No. 2217, chapter 94.

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. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2005) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of ~~twenty-one~~ twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. 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. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by

the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 15. REPEAL. Section 39-04-39.5 of the North Dakota Century Code is repealed.

SECTION 16. EFFECTIVE DATE - CONTINGENT EXPIRATION DATE.

Section 13 of this Act is effective for qualifying motor vehicle and special fuel purchases made after December 31, 2004, and is effective until the first day of the first month after the tax commissioner, with the approval of the attorney general, certifies to the governor and the office of the legislative council that an Act of Congress has specifically authorized, or a United States Supreme Court decision has held or may be interpreted to have held, that a state may impose its motor vehicle and special fuel tax laws on native Americans who purchase motor vehicle fuels and special fuels from a retail fuel dealer located on the Indian reservation where the native American is enrolled. Sections 10, 11, 12, and 14 of this Act are effective for registrations and taxable events occurring after June 30, 2005. Section 15 of this Act is effective for registrations occurring after June 30, 2005.

Approved May 4, 2005

Filed May 4, 2005

CHAPTER 41

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 a continuing appropriation; to provide for distribution amounts from permanent funds; and to create and enact a new section to chapter 15-08.1 of the North Dakota Century Code, relating to a continuing appropriation from the lands and minerals trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the commissioner of university and school lands in section 3 of this Act as follows:

Salaries and wages	\$1,876,162
Operating expenses	722,572
Capital assets	37,000
Grants	4,888,100
Contingencies	<u>50,000</u>
Total special funds - Base level	\$7,573,834

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the commissioner of university and school lands which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$334,618
Operating expenses	(73,872)
Capital assets	<u>(27,000)</u>
Total special funds - Adjustments/enhancements	\$233,746

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury, 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, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$2,210,780
Operating expenses	648,700
Capital assets	10,000
Grants	4,888,100
Contingencies	<u>50,000</u>
Total special funds	\$7,807,580

SECTION 4. 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 3 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, 2005, and ending June 30, 2007.

SECTION 5. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 3 of this Act.

SECTION 6. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer from the contingencies line item in section 3 of this Act to all other line items except the capital assets line item. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

SECTION 7. DISTRIBUTIONS TO STATE INSTITUTIONS. Notwithstanding section 15-03-05.2 during the biennium beginning July 1, 2005, and ending June 30, 2007, the board of university and school lands shall distribute the following amounts, or so much income as may be available, from the permanent funds managed for the benefit of the following entities:

North Dakota state university	\$1,146,000
University of North Dakota	986,000
Youth correctional center	404,000
School for the deaf	322,000
North Dakota state college of science	339,600
State hospital	343,600
Veterans' home	269,600
Valley City state university	268,000
North Dakota vision services - School for the blind	241,600
Mayville state university	176,000
Minot state university - Bottineau	33,600
Dickinson state university	33,600
Minot state university	33,600
Total	\$4,597,200

SECTION 8. A new section to chapter 15-08.1 of the North Dakota Century Code is created and enacted as follows:

Lands and minerals trust fund - Continuing appropriation. There is appropriated annually the amount necessary to pay from the lands and minerals trust fund all principal and interest to the common schools trust fund on any loans made from the fund to the developmentally disabled loan fund program nos. 2 and 3. This authority is ineffective after all loans are repaid.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 42

SENATE BILL NO. 2014

(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 industrial commission; to provide for approval of alternate bids by the emergency commission and budget section; to authorize transfers; to amend and reenact sections 38-08-04.2, 38-12-02, 38-12-03, and 38-12.1-04, subsection 1 of section 38-12.1-05, sections 38-15-03, 38-19-03, and 38-19-04, subsection 10 of section 38-15-02, section 54-17-03, subsection 3 of section 54-17.4-01, and sections 54-17.4-05, 54-17.4-06, and 54-17.4-07 of the North Dakota Century Code, relating to appointment of a director of mineral resources, transfer of the state geologist's functions to the director of mineral resources, and the secretary of the industrial commission; to repeal section 3 of chapter 491 of the 2003 Session Laws, relating to the expiration of the authorization for the state to purchase oil put options; to provide for a report to the legislative council; to provide a section of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state industrial commission and agencies under its control in section 3 of this Act as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$6,244,663
Operating expenses	1,904,767
Capital assets	68,300
Lignite research and development	16,270,000
Grants - Bond payments	<u>19,830,990</u>
Total all funds - Base level	\$44,318,720
Less estimated income - Base level	<u>37,291,836</u>
Total general fund - Base level	\$7,026,884

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$16,527,614
Operating expenses	10,925,665
Capital assets	825,000
Contingencies	<u>1,500,000</u>
Total from Bank of North Dakota fund - Base level	\$29,778,279

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$5,700,000
Agriculture partnership in assisting community expansion fund	1,425,000
Beginning farmer revolving loan fund	<u>950,000</u>
Total general fund - Base level	\$8,075,000

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$16,690,956
Operating expenses	12,991,196
Contingencies	250,000
Agriculture promotion	<u>50,000</u>
Total from mill and elevator fund - Base level	\$29,982,152

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$3,929,907
Operating expenses	2,391,480
Grants	27,168,380
HFA contingencies	<u>100,000</u>
Total from housing finance agency fund - Base level	\$33,589,767
Grand total general fund - Section 1	\$15,101,884
Grand total special funds - Section 1	<u>130,642,034</u>
Grand total all funds - Section 1	\$145,743,918

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS

INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state industrial commission and agencies under its control which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	(\$184,571)
Operating expenses	3,083
Capital assets	(22,800)
Lignite research and development	(1,070,000)
Grants - Bond payments	7,461,422
Oil and gas division contingency	<u>225,000</u>
Total all funds - Adjustments/enhancements	\$6,412,134
Less estimated income - Adjustments/enhancements	<u>6,604,189</u>
Total general fund - Adjustments/enhancements	(\$192,055)

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$1,625,778
Capital assets	10,447,000
Contingencies	<u>200,000</u>
Total from Bank of North Dakota fund - Adjustments/enhancements	\$12,272,778

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Total general fund - Adjustments/enhancements	<u>(\$2,375,000)</u>
Total from beginning farmer revolving loan fund - Adjustments/enhancements	\$2,375,000

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$641,435
Operating expenses	1,967,817
Contingencies	50,000
Agriculture promotion	<u>200,000</u>
Total from mill and elevator fund - Adjustments/enhancements	\$2,859,252

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$446,894
Operating expenses	414,098
Grants	<u>(577,100)</u>
Total from housing finance agency fund - Adjustments/enhancements	\$283,892
Grand total general fund - Section 2	<u>(\$2,567,055)</u>
Grand total special funds - Section 2	<u>24,395,111</u>
Grand total all funds - Section 2	\$21,828,056

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$6,060,092
Operating expenses	1,907,850
Capital assets	45,500
Lignite research and development	15,200,000
Grants - Bond payments	27,292,412
Oil and gas division contingency	<u>225,000</u>
Total all funds	\$50,730,854
Less estimated income	<u>43,896,025</u>
Total general fund appropriation	\$6,834,829

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$18,153,392
Operating expenses	10,925,665
Capital assets	11,272,000
Contingencies	<u>1,700,000</u>
Total appropriation from Bank of North Dakota fund	\$42,051,057

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$5,700,000
Agriculture partnership in assisting community expansion fund	1,425,000
Beginning farmer revolving loan fund	<u>950,000</u>
Total all funds	\$8,075,000
Less beginning farmer revolving loan fund	<u>2,375,000</u>
Total general fund	\$5,700,000

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$17,332,391
Operating expenses	14,959,013
Contingencies	300,000
Agriculture promotion	<u>250,000</u>
Total appropriation from mill and elevator fund	\$32,841,404

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$4,376,801
Operating expenses	2,805,578
Grants	26,591,280
HFA contingencies	<u>100,000</u>
Total appropriation from housing finance agency fund	\$33,873,659
Total general fund appropriation - Section 3	\$12,534,829
Total special funds appropriation - Section 3	<u>155,037,145</u>
Total all funds appropriation - Section 3	\$167,571,974

SECTION 4. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 3 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. APPROPRIATION - EMERGENCY COMMISSION

APPROVAL. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 3 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the industrial commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. ALTERNATE BIDS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL - APPROPRIATION. The industrial commission shall advertise for bids for a new building for the Bank of North Dakota. Alternate bids must be solicited which would allow footings to be installed for up to three additional floors. The industrial commission may proceed with the construction of additional footings upon approval by the emergency commission and budget section. Any additional funds required for the footings in excess of the \$11,000,000 appropriated in subdivision 2 of section 3 of this Act are hereby appropriated to the Bank of North Dakota for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. TRANSFER. The sum of \$73,650, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 2005, and ending June 30, 2007, upon order of the industrial commission.

SECTION 8. TRANSFER. The sum of \$94,545, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 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, 2005, and ending June 30, 2007, upon order of the industrial commission.

SECTION 9. TRANSFER. The sum of \$64,727, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 2005, and ending June 30, 2007, upon order of the industrial commission.

SECTION 10. TRANSFER. The sum of \$26,019, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the revenues of the municipal bond bank. The available moneys must be transferred during the biennium beginning July 1, 2005, and ending June 30, 2007, upon order of the industrial commission.

SECTION 11. INCOME AUTHORIZATION - STUDENT LOAN TRUST. There is authorized the receipt of fees by the industrial commission in the sum of \$79,100, or so much of the sum as is owed, included in the special funds appropriation line item in subdivision 1 of section 3 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, 2005, and ending June 30, 2007, upon order of the industrial commission.

SECTION 12. TRANSFER. The industrial commission shall transfer to the general fund in the state treasury the sum of \$5,000,000 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, 2005, and ending June 30, 2007.

SECTION 13. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$1,500,000, or so much of the amount as may be necessary, included in the grants - bond payments and special funds appropriation line items in subdivision 1 of section 3 of this Act, is appropriated 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 lignite 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 studies and activities in support of the lignite vision 21 project; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not

needed for the purposes stated in this section are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 14. LEGISLATIVE INTENT - BOND PAYMENTS. The amount of \$27,292,412 included in subdivision 1 of section 3 of this Act in the grants - bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 2005, and ending June 30, 2007:

North Dakota university system	\$14,278,141
Department of corrections - State penitentiary	3,038,586
State department of health	685,309
Job service North Dakota	696,650
Department of human services - Southeast human service center	571,731
Department of human services - State hospital	517,634
Department of human services - Developmental center at Grafton	593,231
Adjutant general	59,248
Veterans' home improvement fund	234,891
ITD connectND	<u>5,402,163</u>
Subtotal	\$26,077,584
University system energy conservation projects	1,214,828
Total	\$27,292,412

SECTION 15. LEGISLATIVE INTENT - FIRSTHOME PARK GRANT. It is the intent of the fifty-ninth legislative assembly that the housing finance agency provide a \$100,000 grant from funds appropriated in the grants line item in subdivision 5 of section 3 of this Act to the Dickinson park district for park improvements at the west river community center complex to be named the firsthome park.

SECTION 16. APPROPRIATION - TRANSFER. The funds appropriated by subdivision 3 of section 3 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 Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subdivision 3 of section 3 of this Act.

SECTION 17. UNOBLIGATED MONEYS IN PARTNERSHIP FOR COMMUNITY EXPANSION FUND - TRANSFER TO THE GENERAL FUND. Notwithstanding section 6-09.14-02, any unobligated moneys, up to \$2,200,000, in the partnership in assisting community expansion fund as of June 30, 2005, must be returned to the general fund and considered general fund turnback.

SECTION 18. CONTINGENT OIL AND GAS DIVISION FUNDING - EMERGENCY COMMISSION APPROVAL. The funds appropriated in the oil and gas division contingency line item in subdivision 1 of section 3 of this Act are from the land and minerals trust fund. If funds are required due to the average drilling rig count exceeding thirty active rigs for each month in any consecutive three-month period, the oil and gas division may spend moneys from this line item upon emergency commission approval. The oil and gas division may hire up to two full-time equivalent positions with the contingency funds.

SECTION 19. AGRICULTURE PROMOTION - INTERNATIONAL BUSINESS AND TRADE OFFICE. The mill and elevator association shall provide a grant of \$200,000 from the agriculture promotion line item in subdivision 4 of section 3 of this Act to the international business and trade office upon proof of the

international business and trade office securing \$1 of matching funds from other public or private sources for every \$2 from the mill and elevator association.

SECTION 20. AMENDMENT. Section 38-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.2. Director of mineral resources - Director of oil and gas - Delegation to director of oil and gas. The industrial commission is authorized to appoint a director of oil and gas and to set the director's salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the director of oil and gas. The industrial commission is authorized to appoint a director of mineral resources who shall serve at the pleasure of the commission. The director of mineral resources shall carry out the duties of the director of oil and gas along with the duties of director of mineral resources. The commission may set the salary of the director of mineral resources. The commission may delegate to the director of oil and gas all powers the commission has under this title and under rules enacted under this title.

SECTION 21. AMENDMENT. Section 38-12-02 of the North Dakota Century Code is amended and reenacted as follows:

38-12-02. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions of section 38-08-21, the ~~state geologist~~ director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the ~~office of the state geologist~~ director of mineral resources has the authority:

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data must include:
 - (1) Sample cuts, core chips, or whole cores.
 - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.

- (3) Elevation and location information on the data collection points.
- (4) Other pertinent information as may be requested by the state geologist.

The data so submitted is confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
 - d. The conducting of all exploration, development, and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
 - e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.
2. To regulate the drilling and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.
 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
 4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the state geologist director of mineral resources or the state geologist's director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if ~~same~~ it is necessary and is requested.

SECTION 22. AMENDMENT. Section 38-12-03 of the North Dakota Century Code is amended and reenacted as follows:

38-12-03. Permit required. It is unlawful to commence operations for the exploration, development, or production of subsurface minerals without first obtaining a permit from the state geologist director of mineral resources, under such rules and regulations as may be prescribed by the commission and paying to the commission a fee for each such permit in an amount to be prescribed by the commission.

SECTION 23. AMENDMENT. Section 38-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-12.1-04. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, both public and private, necessary to effectively enforce the provisions of this chapter. The state geologist director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the provisions of this chapter. The commission has authority to make such investigations as it deems proper to

determine whether facts exist which justify action by the commission. The commission acting through the office of the state geologist director of mineral resources has the authority:

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal on state and private lands and roads used in coal exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the persons' successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal exploration.
3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
4. To inspect all drilling or exploration sites. For the purposes of this subsection, the state geologist director of mineral resources or ~~the state geologist's~~ the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of

inspection and sampling and shall have the authority to require the operators' aid if the ~~state geologist or the state geologist's representative~~ director finds it necessary and requests it.

5. Notwithstanding any of the other provisions of this section, the commission acting through the ~~office of the state geologist~~ director of mineral resources shall require that any lands substantially disturbed in coal exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished ~~so as~~ to protect environmental quality, general health and safety, and economic values.

SECTION 24. AMENDMENT. Subsection 1 of section 38-12.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful to commence operations for drilling for the exploration for coal without first obtaining a permit from the ~~state geologist~~ director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application is has been submitted ~~therefor~~.

SECTION 25. AMENDMENT. Section 38-15-03 of the North Dakota Century Code is amended and reenacted as follows:

38-15-03. Jurisdiction of commission. The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The ~~state geologist~~ director of mineral resources shall act as a supervisor charged with enforcing the regulations and orders of the commission applicable to the provisions of this chapter. The commission has authority to make investigations it deems proper to determine whether facts exist which justify action by the commission. The commission has the authority:

1. To require the furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the commission prescribed to govern, satisfy, and resolve conflicting interests among producers within North Dakota.
2. To resolve conflicting interests of producers of natural resources which cannot be voluntarily concluded by them in the public interest to eliminate waste, to the end that the producer, landowner, and mineral owner realize the greatest possible economic advantage.
3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and intent of this chapter.

SECTION 26. AMENDMENT. Section 38-19-03 of the North Dakota Century Code is amended and reenacted as follows:

38-19-03. Jurisdiction of the commission. The commission has jurisdiction and authority and is charged with the responsibility to enforce the

provisions of this chapter. This chapter does not apply to any activity regulated under chapters 38-08, 38-12, 38-12.1, 38-14.1, and 61-28. The jurisdiction granted to the commission by this chapter is not exclusive and does not affect the jurisdiction of other governmental entities. The commission acting through the ~~office of the state geologist~~ director of mineral resources has the authority:

1. To require:

- a. Identification of ownership of all facilities, installations, and equipment used in the extraction of geothermal energy.
- b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
- c. The drilling, boring, casing, excavating, plugging, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and unnecessary environmental degradation.
- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter and the rules and orders of the commission relating to the extraction of geothermal energy. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
- e. Metering or measuring all products extracted from or by means of a facility regulated by this chapter.
- f. That every person who operates a geothermal energy extraction facility in this state shall keep and maintain complete and accurate records of the quantities and nature of products extracted from or by means of any facility, and the ultimate disposition of such products, which records must be available to the commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.
- g. That upon termination of the operation of any facility or activity regulated by this chapter, the operator of the facility shall restore the surface as nearly as possible to its original condition and productivity.

2. To regulate:

- a. The drilling, boring, excavating, and construction of all geothermal energy extraction facilities.
- b. Operations to assure the optimum performance of all facilities regulated under this chapter.

3. To limit and prescribe the nature, quantity, and source of geothermal energy to be extracted from any facility regulated by this chapter.
4. To adopt rules and issue orders to effectuate the purposes of this chapter.

SECTION 27. AMENDMENT. Section 38-19-04 of the North Dakota Century Code is amended and reenacted as follows:

38-19-04. Permit or report required. It is unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility, which is used for other than private residential heating and cooling purposes, without first securing a permit from the ~~state geologist~~ director of mineral resources, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set must be related to the cost of regulation and inspection under this chapter.

A report is required upon completion of any geothermal energy extraction facility used solely for private residential heating or cooling purposes. The report must be prepared by the geothermal energy extraction facility installer on a form provided by the state geologist and must be furnished to the state geologist within thirty days after the completion of the facility. The report must contain relevant information the state geologist requires relating to the environmental safety of the facility, including the facility owner and location, a log of formations penetrated, if any, system specifications and design, and fluids used in the facility.

All construction of geothermal energy extraction facilities must comply with rules adopted under this chapter.

SECTION 28. AMENDMENT. Subsection 10 of section 38-15-02 of 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 but does not include sand and gravel and rocks crushed for sand and gravel.

³⁶ **SECTION 29. AMENDMENT.** Section 54-17-03 of the North Dakota Century Code is amended and reenacted as follows:

54-17-03. Chairman and attorney - Secretary - Employees - Compensation - Bonds. The governor is the chairman of the industrial commission, and its attorney is the attorney general. ~~In the transaction of its general business,~~ The commission shall appoint a secretary and may employ other subordinate officers, employees, and agents, on such terms as ~~it may deem the commission determines~~ proper and as, in its judgment, the public interests may require. The

³⁶ Section 54-17-03 was also amended by section 2 of Senate Bill No. 2130, chapter 487.

commission may require suitable bonds of its secretary or other subordinate officers, employees, or agents. ~~‡ The commission shall fix the amount of the compensation of each person so engaged~~ the commission's secretary, officers, employees, and agents and the secretary's salary may exceed the maximum salary in the grade established for the classification assigned under chapter 54-44.3. The compensation, together with other expenditures for operation and maintenance of the general business of the commission, must remain within the appropriation available in each year for such purpose.

SECTION 30. AMENDMENT. Subsection 3 of section 54-17.4-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Survey" means the North Dakota geological survey, a division of the department of mineral resources.

SECTION 31. AMENDMENT. Section 54-17.4-05 of the North Dakota Century Code is amended and reenacted as follows:

54-17.4-05. State geologist - Qualifications - Selection - Salary. There is created the position of state geologist.

1. The state geologist's qualifications must include a doctor of philosophy degree in geology from an accredited university or college or equivalent geological experience, demonstrated competency in administration, and five years of practical experience in the field of geology ~~to qualify for direction of the survey.~~
2. ~~The commission~~ director of mineral resources shall either appoint the state geologist or carry out the duties of the state geologist along with the duties of director of mineral resources. Prior to appointment of a state geologist ~~the commission~~ director of mineral resources may appoint an acting state geologist.
3. The state geologist is under the direction and control ~~and serves at the pleasure of the commission~~ director of mineral resources.
4. ~~The annual salary of the state geologist is set by the commission subject to legislative appropriation.~~

SECTION 32. AMENDMENT. Section 54-17.4-06 of the North Dakota Century Code is amended and reenacted as follows:

54-17.4-06. State geologist - Authority. The state geologist is the ~~executive and administrative~~ head of the survey and shall exercise the powers of the office and be responsible for the execution of its duties.

SECTION 33. AMENDMENT. Section 54-17.4-07 of the North Dakota Century Code is amended and reenacted as follows:

54-17.4-07. State geologist - Grants, funds, and contracts. The state geologist, with the approval of the ~~commission~~ director of mineral resources, may accept and expend money from and enter into contracts with federal, state, local, or other public entities to carry out the purposes of this chapter or to provide geological services. If such funds exceed appropriations made by the legislative assembly, the ~~state geologist~~ director of mineral resources shall seek emergency commission approval for their expenditure.

SECTION 34. REPEAL. Section 3 of chapter 491 of the 2003 Session Laws is repealed.

SECTION 35. STATE MILL AND ELEVATOR ASSOCIATION - REPORT TO BUDGET SECTION. The manager of the state mill and elevator association shall present an annual report to the budget section of the legislative council. The report must include the current role and mission of the state mill and elevator association and short-term and long-term plans for acquisitions, construction, renovation, equipment upgrading, sales and marketing, personnel, and all financial matters. The report also must include a description of efforts by the state mill and elevator association to inform legislators about the role, mission, and operations of the state mill and elevator association.

SECTION 36. EMERGENCY. The appropriation in subdivision 3 of section 3 of this Act and the transfer in section 16 of this Act for the partnership in assisting community expansion are declared to be emergency measures.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 43

SENATE BILL NO. 2015

(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 12-44.1 of the North Dakota Century Code, relating to the incarceration of female inmates in grade one correctional facilities; to amend and reenact subsection 2 of section 12.1-32-07 of the North Dakota Century Code, relating to supervision fees for a probationer; to provide a statement of legislative intent; to provide for a legislative council study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of corrections and rehabilitation in section 3 of this Act as follows:

Field services	\$21,087,058
Prisons division	72,022,798
Juvenile community services	9,629,163
Youth correctional center	<u>11,577,679</u>
Total all funds - Base level	\$114,316,698
Less estimated income - Base level	<u>32,580,087</u>
Total general fund - Base level	\$81,736,611

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of corrections and rehabilitation which are included in the appropriation in section 3 of this Act as follows:

Field services	\$5,246,568
Prisons division	5,606,730
Juvenile community services	(1,722,510)
Youth correctional center	1,213,416
Equity pool	<u>1,500,000</u>
Total all funds - Adjustments/enhancements	\$11,844,204
Less estimated income - Adjustments/enhancements	<u>(6,420,477)</u>
Total general fund - Adjustments/enhancements	\$18,264,681

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Field services	\$26,333,626
Prisons division	77,629,528
Juvenile community services	7,906,653
Youth correctional center	12,791,095
Equity pool	1,500,000
Total all funds	\$126,160,902
Less estimated income	26,159,610
Total general fund appropriation	\$100,001,292

SECTION 4. CRIME VICTIMS RESTITUTION AND GIFT FUND. The sum of \$44,000, or so much of the sum as may be necessary, included in the field services line item in section 3 of this Act, is from the crime victims restitution and gift fund and must be used by the department of corrections and rehabilitation for the purposes provided in section 54-23.4-05, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. STATE PENITENTIARY LAND FUND. The sum of \$135,000, or so much of the sum as may be necessary, included in the youth correctional center line item in section 3 of this Act, is from the state penitentiary land fund and must be used by the department of corrections and rehabilitation for capital projects at the youth correctional center, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. PROBATIONER VIOLATION TRANSPORTATION FUND. The sum of \$165,000, or so much of the sum as may be necessary, included in the field services line item in section 3 of this Act, is from the probationer violation transportation fund and must be used by the department of corrections and rehabilitation for the purposes provided in section 12-65-08, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Female inmates in grade one correctional facilities. Notwithstanding section 12-44.1-06, a grade one correctional facility that has a contract with the department of corrections and rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the department of corrections and rehabilitation may confine the female inmate for more than one year in accordance with the terms of the contract. A female inmate who has been sentenced to the legal and physical custody of the department of corrections and rehabilitation and who is confined in a grade one correctional facility under a contract with the department of corrections and rehabilitation has the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined in a department of corrections and rehabilitation prisons division facility.

³⁷ **SECTION 8. AMENDMENT.** Subsection 2 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

³⁷ Section 12.1-32-07 was also amended by section 2 of House Bill No. 1051, chapter 113.

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-six~~ forty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

SECTION 9. LEGISLATIVE INTENT - COMPOSITE SCHEDULE. It is the intent of the fifty-ninth legislative assembly that future composite schedules for teacher salaries prepared by the office of management and budget's human resource management services division be developed so that the pay increases are based on the salaries of all teachers who teach in schools with a combined enrollment of greater than one hundred students, excluding the Fargo and West Fargo school districts.

SECTION 10. LEGISLATIVE INTENT - EMPLOYEE SALARY EQUITY - FIELD SERVICES. It is the intent of the fifty-ninth legislative assembly that if the department of corrections and rehabilitation can identify \$250,000 of general fund savings within its 2005-07 biennium appropriation, the department may use that savings to provide salary equity adjustments for employees in the field services division.

SECTION 11. LEGISLATIVE INTENT - SHORT-TERM DIVERSION. It is the intent of the fifty-ninth legislative assembly that the department of corrections and rehabilitation increase the number of inmates in short-term diversion during the 2005-07 biennium by fifteen inmates, from thirty to forty-five inmates.

SECTION 12. LEGISLATIVE COUNCIL STUDY - STRATEGIC PLAN FOR DEPARTMENT OF CORRECTIONS AND REHABILITATION'S INCARCERATION AND CORRECTIONAL FACILITY NEEDS.

1. The legislative council shall appoint an interim committee, during the 2005-06 interim, to develop a legislative strategic plan, including site and facilities' plans, for the department of corrections and rehabilitation's incarceration and correctional facility needs.
2. The legislative council shall appoint a minimum of ten members of the house of representatives and a minimum of five members of the senate. The legislative council shall appoint the chairman of the appropriations committee of the house of representatives or the senate or the assistant majority leader of the house of representatives or the senate as the chairman of the committee.
3. The committee shall:
 - a. Receive information from the department of corrections and rehabilitation, regional authorities with regional corrections centers,

counties with county jails, cities with city jails, corporations operating private correctional facilities, and others the committee considers necessary to develop a strategic plan for the state's incarceration and correctional facility needs for the next twenty years.

- b. Consider using existing facilities; other available state facilities; and county, local, or private facilities.
 - c. Consider any cost and benefits of replacing all or parts of existing correctional facilities or other state property with a modern all-encompassing facility.
 - d. Consider state-operated facilities compared to contract-operated state facilities.
 - e. Consider contracting with a private entity to provide all or part of the state's correctional and rehabilitation needs.
 - f. Consider the impact to the department of corrections and rehabilitation of changing sentencing guidelines, increasing fines as an alternative to incarceration for nonviolent or minor drug offenders, and utilizing alternatives to incarceration and treatment programs, including receiving information regarding the efficiency of treatment programs.
 - g. Develop a strategic plan based on the information received by the committee.
4. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 13. EXPIRATION DATE. Section 7 of this Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 44

SENATE BILL NO. 2016

(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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to job service North Dakota in section 3 of this Act as follows:

Salaries and wages	\$34,017,882
Operating expenses	14,529,359
Capital assets	39,684
Grants	7,617,792
Work force 2000	<u>1,250,000</u>
Total all funds - Base level	\$57,454,717
Less estimated income - Base level	<u>56,204,717</u>
Total general fund - Base level	\$1,250,000

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for job service North Dakota which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$645,718
Operating expenses	(1,290,446)
Capital assets	185,316
Grants	1,429,373
Work force 2000	<u>230,231</u>
Total all funds - Adjustments/enhancements	\$1,200,192
Less estimated income - Adjustments/enhancements	<u>969,961</u>
Total general fund - Adjustments/enhancements	\$230,231

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$34,663,600
Operating expenses	13,238,913
Capital assets	225,000
Grants	9,047,165
Work force 2000	<u>1,480,231</u>
Total all funds	\$58,654,909

Less estimated income	57,174,678
Total general fund appropriation	\$1,480,231

SECTION 4. APPROPRIATION - REED ACT FUNDS - WORK FIRST.

There is appropriated out of moneys made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the Social Security Act, the sum of \$254,925, or so much of the sum as may be necessary, to job service North Dakota for the purpose of paying allowable Wagner-Peyser Act expenses associated with the work first demonstration project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. APPROPRIATION - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION PROCUREMENT PLANNING.

There is appropriated out of moneys made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the Social Security Act, the sum of \$525,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of unemployment insurance computer system modernization procurement planning, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Grand total general fund appropriation S.B. 2016	\$1,480,231
Grand total estimated income appropriation S.B. 2016	\$57,954,603
Grand total all funds appropriation S.B. 2016	\$59,434,834

SECTION 6. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 3 of this Act are appropriated, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. WORK FORCE 2000 FUNDING. Fifty percent of the work force 2000 funding in section 3 of this Act must be used for projects for new or expanding businesses in North Dakota.

SECTION 8. WORK FIRST - REED ACT. The special appropriation of federal Reed Act funds in section 4 of this Act is to be used by job service North Dakota to carry out a demonstration project on the effectiveness of certain actions in causing more rapid reemployment of unemployment insurance claimants and a corresponding reduction in the average duration of claims. The legislative assembly specifically authorizes job service North Dakota, during the period July 1, 2005, through June 30, 2007, to carry out this demonstration project. In so doing, job service North Dakota may provide additional or alternative services to the group of claimants randomly selected for participation in the demonstration project, and may, after assuring appropriate due process requirements are met, make participation in those services a condition of nonmonetary eligibility for unemployment insurance benefits. Job service North Dakota may also provide those demonstration project services at fewer than all of its local office sites.

SECTION 9. UNEMPLOYMENT INSURANCE MODERNIZATION - REED ACT. The special appropriation of federal Reed Act funds in section 5 of this Act is to be used by job service North Dakota to carry out procurement planning for replacement of the current automated unemployment insurance tax and benefit system. Job service North Dakota is specifically directed to take those actions necessary to determine the requirements of such a replacement system and to issue

a request for proposals to vendors to seek responses from those vendors on a timetable that will allow the selected response to be used as the basis of an appropriation request to the sixtieth legislative assembly.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 45**SENATE BILL NO. 2017**

(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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the office of administrative hearings in section 3 of this Act as follows:

Salaries and wages	\$938,648
Operating expenses	304,310
Total special funds appropriation - Base level	\$1,242,958

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of administrative hearings which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$95,487
Operating expenses	(37,393)
Total special funds appropriation - Adjustments/enhancements	\$58,094

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 office of administrative hearings for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$1,034,135
Operating expenses	266,917
Total special funds appropriation	\$1,301,052

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 46

SENATE BILL NO. 2018

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

DEPARTMENT OF COMMERCE

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide appropriations to various agencies; to authorize the office of management and budget to borrow funds from the Bank of North Dakota; to provide for an unemployment compensation shared work demonstration project; to provide for a transfer from the beginning farmer revolving loan fund; to provide a statement of legislative intent; to create and enact two new sections to chapter 54-34.3, a new section to chapter 54-44.5, and three new sections to chapter 54-60 of the North Dakota Century Code, relating to a division of economic development and finance international business and trade office, a division of economic development and finance local economic developer certification program, creation of an office of renewable energy and energy efficiency within the division of community services, department of commerce target industry requirements, a department of commerce state employee image training program, and a department of commerce business hotline program; to amend and reenact sections 2 and 3 of House Bill No. 1009, as approved by the fifty-ninth legislative assembly, subsection 2 of section 4-14.1-07, sections 4-14.1-08, 4-14.1-09, 4-14.1-10, and 54-34.3-03, subsection 1 of section 54-34.3-06, and sections 57-02-27.3 and 57-51.1-07.2 of the North Dakota Century Code, relating to the agriculture commissioner's appropriation, administration of ethanol production incentives, the structure of the division of economic development and finance, the division of economic development and finance North Dakota American Indian business development office, taxable valuation of wind turbine electric generators, and the permanent oil tax trust fund; to provide for state agency studies and reports to the legislative council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of commerce in section 3 of this Act as follows:

Salaries and wages	\$6,713,340
Operating expenses	8,237,247
Grants	46,585,026
North Dakota development fund	1,550,000
Agricultural products utilization	2,983,179
Discretionary grants	1,447,127
Lewis and Clark bicentennial	3,851,911
Total all funds - Base level	\$71,367,830
Less estimated income - Base level	52,353,107
Total general fund - Base level	<u>\$19,014,723</u>

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding

adjustments or enhancements to the base funding level for the department of commerce which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$986,030
Operating expenses	1,294,721
Capital assets	25,000
Grants	3,517,844
North Dakota development fund	(1,550,000)
Agricultural products utilization	(192,179)
Discretionary funds	3,000
Economic development initiatives	644,568
Economic development grants	150,000
Lewis and Clark bicentennial	80,733
Total all funds - Adjustments/enhancements	\$4,959,717
Less estimated income - Adjustments/enhancements	<u>4,836,887</u>
Total general fund - Adjustments/enhancements	\$122,830

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 commerce for the purpose of defraying the expenses of its various divisions for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$7,699,370
Operating expenses	9,531,968
Capital assets	25,000
Grants	50,102,870
Agricultural products utilization	2,791,000
Discretionary funds	1,450,127
Economic development initiatives	644,568
Economic development grants	150,000
Lewis and Clark bicentennial	3,932,644
Total all funds	\$76,327,547
Less estimated income	<u>57,189,994</u>
Total general fund appropriation	\$19,137,553

SECTION 4. APPROPRIATION. There is 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 office of management and budget for the purpose of establishing and maintaining procurement information on the internet and for performing the procurement assistance study, for the biennium beginning July 1, 2005, and ending June 30, 2007. The office of management and budget is authorized one full-time equivalent position.

SECTION 5. APPROPRIATION. There is 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 state board of higher education for the purpose of performing the technology commercialization study provided for in Senate Bill No. 2032, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the upper great plains transportation institute for the purpose of performing the transportation study

provided for in Senate Bill No. 2032, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. APPROPRIATION - JOB SERVICE. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, and from other funds to be collected by job service, the sum of \$20,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of defraying any implementation costs associated with implementing a shared work demonstration project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. JOB SERVICE NORTH DAKOTA - SHARED WORK DEMONSTRATION PROJECT. During the 2005-06 interim, job service North Dakota shall develop, implement, and operate a shared work demonstration project to demonstrate the feasibility of providing for a statewide shared work unemployment compensation program. Job service North Dakota shall seek the advice of the unemployment insurance advisory council in developing, implementing, and operating this demonstration project. The demonstration project must:

1. Operate for one selected employer, which must have at least seventy-five employees and must be an experienced-rated employer.
2. Operate in accordance with a specific written agreement between job service North Dakota, the selected employer, and the labor representative of the collective bargaining agreement if a collective bargaining agreement exists.
3. Allow shared work compensation to be paid to employees who, being otherwise eligible for unemployment insurance benefits, have their working hours reduced by the selected employer by at least ten percent but no more than sixty percent.
4. Operate in such a manner that the selected employer's unemployment insurance experience ratings are not compromised.
5. Operate in such a manner that the unemployment trust fund is not so negatively impacted as to result in a greater tax burden to the remainder of the employers contributing to the trust fund.
6. Operate from January 1, 2006, through June 30, 2007, after which the demonstration project must cease.
7. Provide that employees receiving benefits calculated solely under the shared work demonstration project are not subject to the sixty percent weekly earnings disregard provided for under section 52-06-06.

SECTION 9. LEGISLATIVE COUNCIL STUDY - SHARED WORK DEMONSTRATION PROJECT. During the 2005-06 interim, the legislative council shall consider studying the implementation by job service North Dakota of a shared work demonstration project. If the legislative council conducts this study, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the agricultural fuel tax fund in the state treasury, not otherwise appropriated, the

sum of \$75,000, or so much of the sum as may be necessary, and from federal funds, the sum of \$150,000, or so much as may be necessary, to the department of commerce for the agricultural products utilization commission for the purpose of an animal identification initiatives grant program to meet national standards for the biennium beginning July 1, 2005, and ending June 30, 2007. The state's administrator of the animal identification program as provided for in section 36-09-25 shall establish the grant criteria to be used by the agricultural products utilization commission for allocating the grants to auction markets, weighing associations, and feedlots.

SECTION 11. CENTERS OF EXCELLENCE - OFFICE OF MANAGEMENT AND BUDGET - BORROWING AUTHORITY - APPROPRIATION - REPAYMENT FROM PERMANENT OIL TAX TRUST FUND. As requested by the centers of excellence commission, the office of management and budget shall borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing funding to centers of excellence as directed by the centers of excellence commission, for the biennium beginning July 1, 2005, and ending June 30, 2007. By June 30, 2007, the office of management and budget shall repay any loan obtained pursuant to provisions of this section, including accrued interest, from funds available in the permanent oil tax trust fund. Repayment may be made from transfers into the permanent oil tax trust fund after a total of \$77,000,000 of oil tax revenues has been received by the general fund during the 2005-07 biennium, including the \$71,000,000 deposited in the general fund in accordance with section 57-51.1-07.2.

SECTION 12. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - PERMANENT OIL TAX TRUST FUND - LOAN REPAYMENT. Notwithstanding section 57-51.1-07.2, there is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$16,000,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of repaying the Bank of North Dakota for loans and accrued interest relating to funds borrowed for centers of excellence, for the biennium beginning July 1, 2005, and ending June 30, 2007. The appropriation made under this section is limited to 50 percent or \$16,000,000, whichever is less, of the revenues deposited in the permanent oil tax trust fund that exceed \$6,000,000 for the 2005-07 biennium.

SECTION 13. CENTERS OF EXCELLENCE - OFFICE OF MANAGEMENT AND BUDGET - CONTINGENT BORROWING AUTHORITY - APPROPRIATION. As requested by the centers of excellence commission and subject to emergency commission and budget section approval, the office of management and budget shall borrow the sum of \$5,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing funding to centers of excellence as directed by the centers of excellence commission, for the biennium beginning July 1, 2005, and ending June 30, 2007. The office of management and budget shall request funding from the sixtieth legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest, from funds available in the permanent oil tax trust fund. The borrowing authority and appropriation provided for in this section is available only if all other funding provided by the fifty-ninth legislative assembly for centers of excellence has been obligated.

SECTION 14. LEGISLATIVE INTENT - FUTURE FUNDING FOR CENTERS OF EXCELLENCE. It is the intent of the fifty-ninth legislative assembly that the centers of excellence program be a continuing program for economic development in North Dakota and that the legislative assembly intends to make available an

additional \$30,000,000 for centers of excellence in future bienniums using similar funding mechanisms which will provide a total of \$50,000,000 for centers of excellence.

SECTION 15. AGRICULTURE FUEL TAX REFUNDS. The less estimated income line item in section 3 of this Act includes \$575,000 from refunds of tax for fuel used for agricultural purposes, to be used by the agricultural products utilization commission, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 16. TRANSFER. During the biennium beginning July 1, 2005, and ending June 30, 2007, the director of the office of management and budget and the state treasurer shall transfer \$425,000 from the beginning farmer revolving loan fund to the agricultural fuel tax fund.

SECTION 17. EXEMPTION. The funds appropriated in the agricultural products utilization line item in section 3 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item for grants are available for grants during the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 18. EXEMPTION. The funds appropriated in the discretionary funds line item in section 3 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item may be spent during the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 19. ECONOMIC DEVELOPMENT INITIATIVES. The economic development initiatives line item in section 3 of this Act includes \$394,568 from the general fund and \$250,000 of special funds raised by the department of commerce for the following economic development initiatives recommended by the primary sector business congress for the biennium beginning July 1, 2005, and ending June 30, 2007:

- Target industry identification and report
- Image information program
- Business hotline program
- Local economic developer certification and training program
- Dakota manufacturing initiative
- Intellectual property rights study and report
- Economic development incentives study and report
- Business climate initiative study

SECTION 20. LIFE SCIENCES SECTOR DEVELOPMENT GRANT. The department of commerce shall provide a \$100,000 grant from funds appropriated in the economic development grants line item in section 3 of this Act to an economic development corporation in the Red River valley research corridor by June 30, 2006, to increase opportunities in the state for expanded research and business development in the life sciences sector for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 21. RURAL DEVELOPMENT COUNCIL GRANT - BUDGET SECTION REPORT. The department of commerce shall provide a grant of up to \$50,000 from the funds appropriated in the economic development grants line item in section 3 of this Act to the rural development council for the purpose of matching federal funds for the biennium beginning July 1, 2005, and ending June 30, 2007. The department of commerce shall report to the budget section after July 1, 2006, on the use of this funding.

SECTION 22. WHEAT SCAB RESEARCH GRANT - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION. Upon receipt, review, and approval of an application for grant funding that meets the provisions of House Bill No. 1519, as approved by the fifty-ninth legislative assembly, from a private company within the state doing research on sensor technology for the purpose of obtaining more detailed environmental data relating to wheat scab disease and to improve the management of the disease, the agricultural products utilization commission shall provide a grant to this company of \$100,000 from its funding available for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 23. LEWIS AND CLARK BICENTENNIAL - ADDITIONAL SALES TAX ON LODGING. The Lewis and Clark bicentennial line item in section 3 of this Act includes \$3,041,511, or such lesser amount as is generated from the separate and additional tax imposed under section 57-39.2-03.8 or 57-39.7-01 of the North Dakota Century Code.

SECTION 24. STATE TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION INCENTIVE PROGRAM. The state tax commissioner shall conduct an audit of the ethanol production incentive program during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 25. RED RIVER VALLEY RESEARCH CORRIDOR MARKETING - BUDGET SECTION REPORT. An amount up to \$400,000 from the general fund in section 3 of this Act must be made available through a grant to the Red River valley research corridor for the purpose of matching federal funds. The funds are available for the period beginning July 1, 2005, and ending June 30, 2007. The department of commerce shall report to the budget section after July 1, 2006, on the use of this funding.

SECTION 26. CENTER FOR TECHNOLOGY - BUDGET SECTION REPORT. An amount up to \$50,000 from the general fund in section 3 of this Act must be made available through a grant to the North Dakota center for technology program. The department of commerce shall report to the budget section after July 1, 2006, on the use of this funding.

SECTION 27. PARTNERS IN MARKETING - BUDGET SECTION REPORT. An amount up to \$250,000 from the general fund in section 3 of this Act must be made available for grants in the partners in marketing grant program. The department of commerce shall report to the budget section after July 1, 2006, on the use of this funding.

SECTION 28. NORTH DAKOTA DEVELOPMENT FUND - INTERNATIONAL BUSINESS AND TRADE OFFICE. Notwithstanding chapter 10-30.5, during the 2005-07 biennium the North Dakota development fund shall provide the division of economic development and finance with grant funds of up to \$500,000 for the purpose of funding the international business and trade office. The North Dakota development fund shall distribute funds to the division of economic development and finance upon proof of the division securing one dollar of matching funds from other public or private sources for every two dollars from the development fund.

SECTION 29. AMENDMENT. Subsection 2 of section 4-14.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. The agricultural products utilization commission office of renewable energy and energy efficiency shall determine the amount of production

incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The ~~commission office~~ shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

³⁸ **SECTION 30. AMENDMENT.** Section 4-14.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-08. Ethanol production incentive - Calculation - Payment. The ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American coalition for ethanol. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall add zero to any amount payable under this section.
- c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the

³⁸ Section 4-14.1-08 was also amended by section 3 of Senate Bill No. 2270, chapter 67.

~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

SECTION 31. AMENDMENT. Section 4-14.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-09. Subsidy limitations. The ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency may not distribute more than one million six hundred thousand dollars annually in payments under section 4-14.1-08. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section.

³⁹ **SECTION 32. AMENDMENT.** Section 4-14.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-10. Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the ~~agricultural products utilization commission~~ office of renewable energy and energy efficiency for use in paying ethanol production incentives under sections 4-14.1-07, 4-14.1-08, and 4-14.1-09.

SECTION 33. AMENDMENT. Section 2 of House Bill No. 1009, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the agriculture

³⁹ Section 4-14.1-10 was also amended by section 4 of Senate Bill No. 2270, chapter 67.

commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages		\$1,243,403
Operating expenses		896,050
Capital assets		(3,000)
Grants		1,674,225
Board of animal health	4,309,224	1,159,224
Contingent appropriation - Wildlife services		130,000
State meat inspection		(763,461)
Pride of Dakota		(180,948)
Wildlife services		(800,000)
Safe send		(308,870)
Noxious weeds		(1,596,836)
Agriculture in the classroom		(45,000)
Total all funds - Adjustments/enhancements	\$1,554,847	\$1,404,847
Less estimated income - Adjustments/enhancements	4,294,916	1,144,916
Total general fund - Adjustments/enhancements		\$259,931

SECTION 34. AMENDMENT. Section 3 of House Bill No. 1009, as approved by the fifty-ninth legislative assembly, is amended and reenacted as follows:

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages		\$5,738,433
Operating expenses		4,255,875
Capital assets		5,000
Grants		1,774,225
Board of animal health	2,178,688	2,028,688
Contingent appropriation - Wildlife services		130,000
Crop harmonization board		25,000
Total all funds	\$14,107,224	\$13,957,221
Less estimated income	9,613,765	9,463,765
Total general fund appropriation		\$4,493,456

SECTION 35. AMENDMENT. Section 54-34.3-03 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-03. Division structure. The division consists of:

1. A finance office;
2. An international business and trade office; ~~and~~
3. ~~Other offices that~~ Offices established by statute; and
4. Offices the director organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the division.

SECTION 36. AMENDMENT. Subsection 1 of section 54-34.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota American Indian business development office to assist North Dakota American Indian tribal and individual economic development representatives, businesses, and ~~North Dakota American Indian~~ entrepreneurs with access to state and federal programs designed to assist ~~them~~ these business interests. The office shall provide services to assist in the formation of partnerships between American Indian and non-American Indian businesses.

SECTION 37. A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

International business and trade office - Advisory board.

1. The director shall administer the international business and trade office. The purpose of the office is to assist North Dakota businesses expand exports to international markets by:
 - a. Advocating for exporters;
 - b. Offering export educational opportunities to North Dakota businesses;
 - c. Researching and raising awareness of export opportunities, issues, and challenges impacting North Dakota businesses;
 - d. Assisting North Dakota businesses in identifying, developing, and cultivating international markets for products; and
 - e. Organizing and carrying out trade missions that seek to facilitate contact and communication between North Dakota businesses and international markets.
2. The director may contract with a third party for the provision of services for the international business and trade office. If the director contracts with a third party under this subsection, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.
3. The division may seek and accept any gift, grant, or donation of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the office of international business and trade.
4. The director may establish an international business and trade office advisory board with which the director may consult in administering the international business and trade office. Each member of the advisory board created under this subsection is entitled to receive per diem compensation at a rate established by the director not exceeding sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directly related to board membership, except that per diem compensation under this section may not be paid to any member

who receives compensation or salary as a regular state employee or official.

SECTION 38. A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

Local economic developer certification program. The director shall implement a certification program through which the division provides training to assist local economic developers in meeting the needs of businesses. The director may contract with a third-party service provider to assist in implementing the program. The director may set and charge a fee for the receipt of services under this program.

SECTION 39. A new section to chapter 54-44.5 of the North Dakota Century Code is created and enacted as follows:

Office of renewable energy and energy efficiency. The office of renewable energy and energy efficiency is established within the division of community services. The office shall assist in the development of renewable energy within this state to provide secure, diverse, sustainable, and competitive renewable energy supplies and promote the conservation of energy and the wise use of energy resources in both the public and private sectors. The office shall communicate and disseminate information concerning state and federal energy conservation and renewable energy incentives, including tax credits, financing and grants to business entities seeking to invest in wind-generated power and transmission, ethanol production and distribution; and the development of biodiesel, biomass, solar, hydropower, geothermal, and other renewable energy sources. The office shall also manage and distribute all production incentive payments as authorized by chapter 4-14.1.

SECTION 40. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Target industries - Report to legislative council. The commissioner shall identify target industries on which the commissioner shall focus economic development efforts. The commissioner shall designate one of these target industries as a special focus target industry. In identifying and updating target industries, the commissioner shall solicit the advice of the foundation and the North Dakota university system. The commissioner may contract for the services of a third party in identifying target industries. The commissioner shall report biennially to the legislative council. This report must include information regarding the process used and factors considered in identifying and updating the target industries, the specific tactics the department has used to specifically address the needs of the target industries, the unique tactics and the specific incentives the department has used to support the growth of the special focus target industry, and any recommended legislative changes necessary to better focus economic development services on these industries.

SECTION 41. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

North Dakota image information program. The commissioner shall implement a program for use by state agencies to assist state agencies and state agencies' employees to present to the public a positive image of the state. The commissioner may expand the program to include use of the program by the private sector.

SECTION 42. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Business hotline. The commissioner shall create and implement a business hotline program. The program must provide for a telephone number through which the department shall provide, during regular business hours, in-state and out-of-state callers with information regarding how to do business in the state, the services and assistance available to businesses, the advantages of doing business in the state, and information on state and other resources that provide assistance to businesses in the state. In addition to directly providing information, the department may use the business hotline as a clearinghouse through which to refer callers to other federal, state, local, or private sector economic developers. The program must include an in-state and out-of-state marketing campaign in support of the program. The commissioner shall follow up on business leads gained through the program and shall gather data on the results of calls, including business expansion, location, and startup.

SECTION 43. AMENDMENT. Section 57-02-27.3 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.3. Taxable valuation of centrally assessed wind turbine electric generators. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed before January 1, 2011, must be valued at three percent of assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is begun after April 30, 2005, and before July 1, 2006, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property and this reduced valuation applies for that property for the duration of the initial purchased power agreement for that generation unit.

SECTION 44. AMENDMENT. Section 57-51.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.2. Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula. ~~At the end of any biennium beginning after June 30, 1997, all~~ All revenue deposited in the general fund during ~~that~~ a biennium ~~and~~ derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds seventy-one 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. 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 seventy-one 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 45. DAKOTA MANUFACTURING INITIATIVE. The department of commerce shall seek to contract with the Dakota manufacturing extension partnership, incorporated, to implement the Dakota manufacturing initiative. The initiative includes building a membership association of manufacturers in North Dakota and South Dakota, complementing existing national, regional, and local manufacturing entities; providing nonduplicative services to the association's manufacturing members which address critical needs, including identifying and developing private procurement opportunities; and developing a consortium of major manufacturers in North Dakota and South Dakota to design and support overall supply chain development and supplier development. Under the initiative, state funds must be leveraged with additional public and private funds, which may include federal funding sources, South Dakota state funding, and funding from manufacturers.

SECTION 46. NORTH DAKOTA AMERICAN INDIAN BUSINESS DEVELOPMENT OFFICE AND INTERNATIONAL BUSINESS AND TRADE OFFICE - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the North Dakota American Indian business development office and the status of the international business and trade office; whether the North Dakota American Indian business development office and international business and trade office should continue; whether the division of economic development and finance should continue to contract with a third party for international business and trade office services; and whether there are potential changes that could be made to enhance the support of American Indian businesses and to enhance the support of international trade by North Dakota businesses.

SECTION 47. LOCAL ECONOMIC DEVELOPERS CERTIFICATION PROGRAM - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the certification program through which the division of economic development and finance provides training services to local economic developers. The report must include information regarding what services have been provided under the program to assist local economic developers, to whom the services were provided, local economic developer level of satisfaction with the program, whether the program should continue, and whether there are changes that could be made to better assist local economic developers.

SECTION 48. IMAGE INFORMATION PROGRAM - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the image information program. The report must include information regarding what information the program provides to state agencies and state agencies' employees, the manner in which the information is provided, the state agencies reached through the program, whether the program has been expanded to provide information to the private sector, whether the program should continue, and whether there are potential changes that could be made to better enhance the state's and private sector's ability to present a positive image of the state.

SECTION 49. BUSINESS HOTLINE PROGRAM - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the business hotline program. This report must include information regarding what information the program provides to callers; the number of calls made to the business hotline number; the manner in which the information is provided to callers; followup data; how the program is marketed; whether the program should continue; and whether there are potential changes that could be made to improve the dissemination of business information to businesses in the state, to persons planning on starting a business in the state, and to businesses wishing to do business in the state.

SECTION 50. DAKOTA MANUFACTURING INITIATIVE - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the Dakota manufacturing initiative. This report must include information regarding how the initiative has been established and regarding the activities of the Dakota manufacturing extension partnership, incorporated. The commissioner shall include in the report whether the state should continue this initiative or whether the goal of assisting manufacturers would be better served by alternative means. The commissioner shall report whether there are potential changes that could be made to improve the networking of manufacturing businesses and other suppliers in this state.

SECTION 51. INTELLECTUAL PROPERTY RIGHTS STUDY - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of commerce, in consultation with the state board of higher education, shall conduct a study of the state's intellectual property laws as they relate to the protection of intellectual property rights. The study must include a review of the state's intellectual property laws, including barriers that may inhibit research and development in the state, and must include consideration of successful actions taken by other states to improve the protection of intellectual property rights. The department shall contract with a third party in performing this study. Before July 1, 2006, the commissioner of commerce shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommendations to improve the protection of intellectual property rights.

SECTION 52. ECONOMIC DEVELOPMENT INCENTIVES STUDY - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of commerce shall conduct a study of the state's economic development incentives. The study must include an inventory of all of the state's economic development incentives, a review of the nature of each incentive, an indication of the targeted class of recipients of each incentive, an indication of the stage of business targeted by each incentive, an analysis of possible barriers to using the incentives, an analysis of possible gaps and overlaps in the state's economic development incentive system, a review of the effectiveness of each incentive and how to gauge the effectiveness of each incentive, and a review of economic development incentive best practices and how the state's incentives compare to best practices. The department of commerce may contract with a third party in performing this study. Before July 1, 2006, the commissioner of commerce shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommended changes to the state's economic development incentive system to make the state's business environment more effective, efficient, and competitive.

SECTION 53. ACCOUNTABILITY MEASURES - REPORTING. The commissioner of the department of commerce shall monitor and report annually

during the 2005-06 interim to either the budget section or an interim committee designated by the legislative council regarding the following North Dakota economic goals and associated benchmarks:

1. Develop unified efforts for economic development based on collaboration and accountability:
 - a. Site selection ranking of the North Dakota department of commerce.
 - b. Share of local economic development organizations participating in statewide marketing strategy.
2. Strengthen cooperation between the university system, economic development organizations, and private businesses:
 - a. Academic research and development expenditures as percentage of gross state product.
 - b. Industry research and development expenditures as percentage of gross state product.
3. Create quality jobs that retain North Dakota's workforce and attract new high-skilled labor:
 - a. Net job growth.
 - b. New private sector businesses per one hundred thousand residents.
 - c. Average annual wage.
 - d. Net migration.
4. Create a strong marketing image that builds on the state's numerous strengths, including workforce, education, and quality of life:
 - a. Positive national and out-of-state media exposure (favorable mentions).
 - b. Number of North Dakota department of commerce web site hits per months.
 - c. Number of leads generated by the North Dakota department of commerce.
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy:
 - a. Net job growth in manufacturing.
 - b. Net job growth in business services.
 - c. New private sector businesses in manufacturing.
 - d. New private sector businesses in business services.

- e. Number of utility patents per one hundred thousand residents.
- 6. Strengthen North Dakota's business climate to increase international competitiveness:
 - a. Gross state product (annual growth rate).
 - b. Venture capital investments (thousands).
 - c. Merchandise export value (per capita).

The department, in cooperation with job service North Dakota, the department of human services, and the university system, shall include in its report the number of individuals trained and the number who became employed as a result of each department's workforce development and training programs, including the state's investment, the areas of occupational training, the average annual salary of those employed, and the average increase in earnings twelve months after completion of training.

SECTION 54. EFFECTIVE DATE. Section 43 of this Act is effective for taxable years beginning after December 31, 2004.

Approved April 27, 2005
Filed April 27, 2005

CHAPTER 47**SENATE BILL NO. 2019**

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

BOARD FOR CAREER AND TECHNICAL EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the state board for career and technical education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state board for career and technical education in section 3 of this Act as follows:

Salaries and wages	\$2,966,641
Operating expenses	956,237
Grants	19,291,883
Adult farm management	625,760
Workforce training	1,350,000
Postsecondary education vocational grants	357,452
Total all funds - Base level	\$25,547,973
Less estimated income - Base level	10,874,500
Total general fund - Base level	\$14,673,473

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state board for career and technical education which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$180,487
Operating expenses	68,621
Grants	2,208,233
Adult farm management	100,000
Total all funds - Adjustments/enhancements	\$2,557,341
Less estimated income - Adjustments/enhancements	407,757
Total general fund - Adjustments/enhancements	\$2,149,584

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 career and technical education for the purpose of defraying the expenses of the various divisions, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$3,147,128
Operating expenses	1,024,858
Grants	21,500,116
Adult farm management	725,760
Workforce training	1,350,000
Postsecondary education vocational grants	<u>357,452</u>
Total all funds	\$28,105,314
Less estimated income	<u>11,282,257</u>
Total general fund appropriation	\$16,823,057

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 48

SENATE BILL NO. 2020

(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 extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm in section 3 of this Act as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$33,567,597
Soil conservation committee	<u>778,679</u>
Total all funds - Base level	\$34,346,276
Less estimated income - Base level	<u>20,486,830</u>
Total general fund - Base level	\$13,859,446

Subdivision 2.

NORTHERN CROPS INSTITUTE

Total all funds - Base level	\$1,523,347
Less estimated income - Base level	<u>777,345</u>
Total general fund - Base level	\$746,002

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds - Base level	\$10,844,750
Less estimated income - Base level	<u>10,361,651</u>
Total general fund - Base level	\$483,099

Subdivision 4.

MAIN RESEARCH CENTER

Total all funds - Base level	\$60,517,214
Less estimated income - Base level	<u>32,306,474</u>
Total general fund - Base level	\$28,210,740

Subdivision 5.

RESEARCH CENTERS

Dickinson research center	\$5,281,134
Central grasslands research center	1,667,387

Hettinger research center	1,521,475
Langdon research center	1,282,885
North central research center	1,712,510
Williston research center	1,643,075
Carrington research center	<u>3,326,616</u>
Total all funds - Base level	\$16,435,082
Less estimated income - Base level	<u>8,967,403</u>
Total general fund - Base level	\$7,467,679

Subdivision 6.

AGRONOMY SEED FARM

Agronomy seed farm	<u>\$1,166,604</u>
Total special funds - Base level	\$1,166,604
Total general fund section 1	\$50,766,966
Total special funds section 1	\$74,066,307
Total all funds section 1	\$124,833,273

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$3,713,370
Soil conservation committee	<u>58,559</u>
Total all funds - Adjustments/enhancements	\$3,771,929
Less estimated income - Adjustments/enhancements	<u>2,427,076</u>
Total general fund - Adjustments/enhancements	\$1,344,853

Subdivision 2.

NORTHERN CROPS INSTITUTE

Total all funds - Adjustments/enhancements	\$369,602
Less estimated income - Adjustments/enhancements	<u>210,506</u>
Total general fund - Adjustments/enhancements	\$159,096

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds - Adjustments/enhancements	\$5,180,440
Less estimated income - Adjustments/enhancements	<u>4,863,538</u>
Total general fund - Adjustments/enhancements	\$316,902

Subdivision 4.

MAIN RESEARCH CENTER

Total all funds - Adjustments/enhancements	\$7,531,596
Less estimated income - Adjustments/enhancements	<u>5,216,848</u>
Total general fund - Adjustments/enhancements	\$2,314,748

Subdivision 5.

RESEARCH CENTERS

Dickinson research center	\$266,660
Central grasslands research center	310,855
Hettinger research center	280,431

Langdon research center	44,611
North central research center	516,625
Williston research center	621,608
Carrington research center	<u>912,972</u>
Total all funds - Adjustments/enhancements	\$2,953,762
Less estimated income - Adjustments/enhancements	<u>2,093,700</u>
Total general fund - Adjustments/enhancements	\$860,062

Subdivision 6.

AGRONOMY SEED FARM

Agronomy seed farm - Adjustments/enhancements	<u>\$31,078</u>
Total special funds - Adjustments/enhancements	\$31,078
Total general fund section 2	\$4,995,661
Total special funds section 2	\$14,842,746
Total all funds section 2	\$19,838,407

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, the main research center, branch research centers, and agronomy seed farm for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$37,280,967
Soil conservation committee	<u>837,238</u>
Total all funds	\$38,118,205
Less estimated income	<u>22,913,906</u>
Total general fund appropriation	\$15,204,299

Subdivision 2.

NORTHERN CROPS INSTITUTE

Total all funds	\$1,892,949
Less estimated income	<u>987,851</u>
Total general fund appropriation	\$905,098

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds	\$16,025,190
Less estimated income	<u>15,225,189</u>
Total general fund appropriation	\$800,001

Subdivision 4.

MAIN RESEARCH CENTER

Total all funds	\$68,048,810
Less estimated income	<u>37,523,322</u>
Total general fund appropriation	\$30,525,488

Subdivision 5.

RESEARCH CENTERS

Dickinson research center	\$5,547,794
Central grasslands research center	1,978,242
Hettinger research center	1,801,906

Langdon research center	1,327,496
North central research center	2,229,135
Williston research center	2,264,683
Carrington research center	<u>4,239,588</u>
Total all funds	\$19,388,844
Less estimated income	<u>11,061,103</u>
Total general fund appropriation	\$8,327,741

Subdivision 6.

AGRONOMY SEED FARM

Agronomy seed farm	\$1,197,682
Total special funds appropriation	\$1,197,682
Grand total general fund appropriation S.B. 2020	\$55,762,627
Grand total special funds appropriation S.B. 2020	\$88,909,053
Grand total all funds appropriation S.B. 2020	\$144,671,680

SECTION 4. ADDITIONAL INCOME - APPROPRIATION. In addition to the amount included in the grand total special funds appropriation line item in section 3 of this Act, any other income, including funds from federal acts, private grants, gifts and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise proved by law, is appropriated for the purpose designated in the act, grant, gift or donation, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. TRANSFER AUTHORITY. Upon approval of the state board of agricultural research and education and appropriate branch research center directors, the director of the main research center may transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 3 of this Act and shall notify the office of management and budget within ten days following the transfer.

SECTION 6. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. The board of higher education is authorized to adjust or increase full-time equivalent positions as needed for the entities in section 3 of this Act, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 2007-2009 budget request.

SECTION 7. UNEXPENDED GENERAL FUND - EXCESS INCOME. Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 3 of this Act are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or revenues are available and may be expended by those entities, during the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 8. LEGISLATIVE INTENT - BEEF SYSTEMS CENTER OF EXCELLENCE. It is the intent of the fifty-ninth legislative assembly that \$800,000 of the appropriation provided in subdivision 4 of section 3 transferred from the agriculture partnership in assisting community expansion fund is a continuation of funding authority for the beef systems center of excellence as provided in section 9 of chapter 20 of the 2003 Session Laws.

SECTION 9. LEGISLATIVE INTENT - BEEF SYSTEMS CENTER OF EXCELLENCE POSITIONS. It is the intent of the fifty-ninth legislative assembly that the two full-time equivalent positions for the beef systems center of excellence not be filled and the related funding for salaries and wages not be spent until the state

board of agricultural research and education enters into a business partnership agreement for the beef systems center of excellence.

SECTION 10. LEGISLATIVE INTENT - WILLISTON RESEARCH CENTER MACHINE STORAGE SHED. It is the intent of the fifty-ninth legislative assembly that an amount of up to \$100,000 of the appropriation provided in subdivision 4 of section 3 of this Act for extraordinary repairs be used to construct an equipment storage facility at the Williston research center.

SECTION 11. AUTHORIZATION. The special funds spending authority of \$1,400,000 included in subdivision 5 of section 1 of chapter 20 of the 2003 Session Laws for the Dickinson research center building project may come from any available source.

SECTION 12. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.

Approved April 27, 2005
Filed April 27, 2005

CHAPTER 49**SENATE BILL NO. 2021**

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

INFORMATION TECHNOLOGY DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to provide an appropriation; to provide a contingent appropriation; to provide a statement of legislative intent; to amend and reenact subsection 4 of section 54-59-05 of the North Dakota Century Code, relating to the powers and duties of the information technology department; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the information technology department in section 3 of this Act as follows:

Salaries and wages	\$25,715,694
Operating expenses	32,120,860
Capital assets	5,323,000
Division of independent study	5,625,480
Educational technology council	793,818
EduTech	2,540,348
Wide area network	7,436,223
Enterprise resource planning system (ConnectND)	20,000,000
Geographic information system	678,343
Prairie public broadcasting	1,337,138
Criminal justice information sharing	<u>4,741,200</u>
Total all funds - Base level	\$106,312,104
Less estimated income - Base level	<u>98,117,301</u>
Total general fund - Base level	\$8,194,803

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the information technology department which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$2,080,403
Operating expenses	9,926,842
Capital assets	5,038,163
Division of independent study	182,159
Educational technology council	91,936
EduTech	112,000
Wide area network	105,988
Enterprise resource planning system (ConnectND)	(20,000,000)
Geographic information system	8,094
Prairie public broadcasting	(1,337,138)
Criminal justice information sharing	<u>(2,216,110)</u>
Total all funds - Adjustments/enhancements	(\$6,007,663)

Less estimated income - Adjustments/enhancements	(7,569,758)
Total general fund - Adjustments/enhancements	\$1,562,095

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 information technology department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Salaries and wages	\$27,796,097
Operating expenses	42,047,702
Capital assets	10,361,163
Division of independent study	5,807,639
Educational technology council	885,754
EduTech	2,652,348
Wide area network	7,542,211
Geographic information system	686,437
Criminal justice information sharing	2,525,090
Total all funds	\$100,304,441
Less estimated income	90,547,543
Total general fund appropriation	\$9,756,898

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, to the secretary of state for a portion of the costs associated with migrating the agency's information technology data base from the AS/400 to a current platform, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. CONTINGENT APPROPRIATION. If the fifty-ninth legislative assembly authorizes the replacement of the department of human services' medicaid management information system, there is appropriated out of special funds derived from other income, not otherwise appropriated, the sum of \$8,125,784 to the information technology department for costs associated with development and implementation of the system, for the biennium beginning July 1, 2005, and ending June 30, 2007. The information technology department is authorized ten additional full-time equivalent positions for the project; however, the positions are only authorized until the development and implementation of the system is completed.

SECTION 6. CRIMINAL JUSTICE INFORMATION SHARING AND EDUCATIONAL TECHNOLOGY COUNCIL. If federal homeland security funding or other federal funding becomes available, the first \$175,000 must be used to complete all proposed criminal justice information sharing initiative projects totaling \$418,910. The next \$50,000 must be used to replace funding from the general fund appropriated for the criminal justice information sharing initiative projects with the savings being made available to the educational technology council for additional classroom video and classroom transformation grants. Any remaining funds must be used to replace funding appropriated from the general fund with the funds from the general fund remaining unspent.

SECTION 7. 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 in section 3 of this Act for the information technology department as may be requested by the chief information officer as determined necessary for the development and implementation of the medicaid management

information system. Any increase in full-time equivalent positions needed for this project must be reported to the director of the office of management and budget during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. AMENDMENT. Subsection 4 of section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of ~~three~~ five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.

SECTION 9. EMERGENCY. Section 8 of this Act is declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 50

SENATE BILL NO. 2022

(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. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the state seed department in section 3 of this Act as follows:

Salaries and wages	\$3,405,750
Operating expenses	1,664,250
Capital assets	70,000
Grants	200,000
Contingencies	<u>300,000</u>
Total seed department fund - Base level	\$5,640,000

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state seed department which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	(\$3,405,750)
Operating expenses	(1,664,250)
Capital assets	(70,000)
Grants	(200,000)
State seed operations	5,909,117
Contingencies	<u>(300,000)</u>
Total seed department fund - Adjustments/enhancements	\$269,117

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from the special funds derived from income, to the state seed department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

Total special funds appropriation	\$5,909,117
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Approved April 8, 2005
Filed April 12, 2005

CHAPTER 51

SENATE BILL NO. 2023

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments; to provide an appropriation for state facility energy improvement capital projects of various state departments and institutions; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to provide a statement of legislative intent; to provide for a legislative council study; to provide an appropriation; and to amend and reenact section 48-01.1-09 of the North Dakota Century Code, relating to the use of a construction manager.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, beginning with the effective date of this Act and ending June 30, 2007. The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2007. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2007, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and comply with any covenants entered into before that date. The proceeds of the evidences of indebtedness and other available funds are appropriated to the agencies listed in this section, beginning with the effective date of this Act and ending June 30, 2007, for the following projects:

Office of management and budget fire suppression	\$3,155,000
Office of the attorney general crime lab addition and renovation	3,632,691
North Dakota state university hazardous material handling and storage facility	3,500,000
North Dakota state college of science electrical distribution	736,000
Dickinson state university murphy hall	4,100,557
Minot state university - Bottineau thatcher hall addition	2,500,000
Department of corrections and rehabilitation James River correctional center ET building improvements	980,000
Department of corrections and rehabilitation James River correctional center programs building code improvements	584,000
North central research center agronomy laboratory and greenhouse	440,000
Central grasslands research extension center office addition	270,000
Main research center greenhouse complex	2,000,000
Historical society chateau interpretive center	1,100,000
Historical society and heritage center research collections expansion	5,500,000
Parks and recreation Turtle River state park administrative office	350,000
Total special funds appropriation	\$28,848,248

The north central research center may obtain and utilize federal and other funds to assist in the construction of an agronomy laboratory at the north central research center. There is appropriated to the north central research center the sum of \$1,250,000, or so much of the sum as may be necessary, from any federal acts, private grants, gifts and donations, or other funds that may become available for this project for the biennium beginning the effective date of this Act and ending June 30, 2007.

The central grasslands research extension center may obtain and utilize federal and other funds to assist in the construction of an office addition at the central grasslands research extension center. There is appropriated to the central grasslands research extension center the sum of \$80,000, or so much of the sum as may be necessary, from any federal acts, private grants, gifts and donations, or other funds that may become available for this project for the period beginning with the effective date of this Act and ending June 30, 2007.

The main research center may obtain and utilize federal funds and other funds to assist in the construction of a greenhouse complex at the main research center. There is appropriated to the main research center the sum of \$5,000,000, or so much of the sum as may be necessary, from any federal acts, private grants, gifts and donations, or other funds that may become available for this project for the biennium beginning the effective date of this Act and ending June 30, 2007.

The state historical society may obtain and utilize federal funds to assist in the renovation and addition at the chateau interpretive center. There is appropriated to the state historical society the sum of \$500,000, or so much of the sum as may be necessary, for any federal or other funds that may become available for this project for the biennium beginning the effective date of this Act and ending June 30, 2007.

The state historical society may obtain and utilize federal or other funds to assist in the heritage center research collections expansion. There is appropriated to the state historical society the sum of \$200,000, 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 the effective date of this Act and ending June 30, 2007.

The department of parks and recreation may obtain and utilize federal funds to assist in the construction of the administrative office building at Turtle River state park. There is appropriated to the department of parks and recreation the sum of \$350,000, 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 the effective date of this Act and ending June 30, 2007.

Grand total special funds appropriation	\$36,228,248
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SECTION 2. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Of the total amount of evidences of indebtedness issued under the provisions of section 1 of this Act, a total of \$300,000 must be available from non-general fund sources to assist in the retirement of the evidences of indebtedness issued for the project costs associated with the construction of the projects authorized by this Act:

Historical society	\$300,000
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SECTION 3. STATE FACILITY ENERGY IMPROVEMENT PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, which are described in a report dated November 3, 2004, filed with the governor by

the division of community services of the department of commerce, and which are declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2 and section 54-44.5-08, beginning with the effective date of this Act and ending June 30, 2007. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2007, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2, section 54-44.5-08, and this Act and comply with any covenants entered into prior to that date. The proceeds of the evidences of indebtedness and other available funds are appropriated to the agencies and institutions listed in this section, beginning with the effective date of this Act and ending June 30, 2007, for the following projects:

University of North Dakota sundry projects	\$2,331,554
Total special funds appropriation	\$2,331,554

SECTION 4. LEGISLATIVE INTENT - OLD MAIN RENOVATION. It is the intent of the fifty-ninth legislative assembly that no state funding be used for any renovation projects of old main at Minot state university - Bottineau.

SECTION 5. LEGISLATIVE COUNCIL STUDY - DEFERRED MAINTENANCE - INFRASTRUCTURE. The legislative council shall consider studying, during the 2005-06 interim, deferred maintenance and infrastructure for all state agencies and institutions and compile a list of all the deferred maintenance and long-term infrastructure needs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

⁴⁰ **SECTION 6. APPROPRIATION - HERITAGE CENTER STUDY.** There is 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 office of management and budget for the purpose of conducting a study regarding an expanded heritage center, including archive storage, exhibit area, and all other such spaces necessary to complete the facility as outlined in the North Dakota state capitol complex master plan dated December 14, 2000. The study also must examine an alternate location for a comparable replacement facility on the capitol grounds taking into account the cost to retrofit the existing heritage center and long-range plans for the capitol grounds. The office of management and budget shall present the results of the study to the sixtieth legislative assembly.

SECTION 7. AMENDMENT. Section 48-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

⁴⁰ Section 6 was vetoed by the Governor, see chapter 614.

48-01.1-09. Use of construction manager. If a governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor. The architect awarded the design contract and the construction manager awarded the construction management contract for a public improvement shall carry out their contractual duties as agents to the public improvement entity. The architect and construction manager may not construct any portion of the public improvement and may not contract with any contractor or subcontractor to construct any portion of the work. The construction manager awarded the contract for ~~construction~~ of a public improvement shall bond the entire cost of the project through a single bond, or through bonds provided by all bid packages and the construction manager's bond for the full amount of the construction manager's services. If the total of the bonds is less than the total project bid, the construction manager shall bond the difference between the total of the bonds and the total project bid.

Approved April 26, 2005

Filed May 4, 2005

CHAPTER 52**SENATE BILL NO. 2031**

(Legislative Council)
(Criminal Justice Committee)

LAW ENFORCEMENT TRAINING APPROPRIATION

AN ACT to provide an appropriation for providing training for law enforcement officers and other emergency service providers; and to provide for a report to the budget section.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$400,000, or so much of the sum as may be necessary, to the highway patrol for the purpose of providing training for law enforcement officers and other emergency service providers, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 2. BUDGET SECTION REPORT. The highway patrol shall provide a report to the budget section after July 1, 2006, regarding the progress of the training program provided for in this Act.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 53

SENATE BILL NO. 2228

(Senators Krebsbach, Bowman, O'Connell)
(Representatives Boucher, Price, Timm)

INTERNATIONAL ARTS CENTER

AN ACT to provide an appropriation to the parks and recreation department to assist with the construction costs of the international arts center at the international music camp; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the parks and recreation department for the purpose of providing a one-time grant to the international music camp to assist with the construction costs of the international arts center to be located at the international music camp at the international peace garden, for the period beginning with the effective date of this Act and ending June 30, 2007. The funding for this project is subject to the building project being awarded to a contractor pursuant to procedures set forth in chapter 48-01.1.

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

Approved April 25, 2005

Filed April 26, 2005

GENERAL PROVISIONS

CHAPTER 54

HOUSE BILL NO. 1037

(Legislative Council)
(Judicial Process Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact subsection 1 of section 14-09-08.5, subsection 3 of section 14-09-08.7, subsection 1 of section 14-09-08.8, and sections 14-09-08.9, 15.1-16-05, and 40-57.3-03 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal section 23-29-07.7 of the North Dakota Century Code, relating to obsolete provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 46 of chapter 148 of the 1989 Session Laws or section 14-09-08.4. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.

SECTION 2. AMENDMENT. Subsection 3 of section 14-09-08.7 of the North Dakota Century Code is amended and reenacted as follows:

3. If the child support agency has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under section 46 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the court. The notice to the obligor must be accompanied by:
 - a. A proposed modification of the child support order to provide for payment of child support in the amount required under the child support guidelines;
 - b. A document by which the obligor may consent to the proposed modification; and

- c. An address and telephone number ~~which that~~ the obligor may ~~contact use~~ to receive information from or schedule a meeting with representatives of the child support agency.

SECTION 3. AMENDMENT. Subsection 1 of section 14-09-08.8 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon a determination by a child support agency, made under ~~section 46 of chapter 148 of the 1989 Session Laws or section 14-09-08.4,~~ that it may or must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.

SECTION 4. 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 46 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 5. AMENDMENT. Section 15.1-16-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-16-05. Education factfinding commission - Rules - Powers. The education factfinding commission may adopt rules. The commission and any factfinder appointed by the commission have, in the performance of their duties, the powers provided in sections ~~28-32-09, 28-32-11, and 28-32-12~~ 28-32-33, 28-32-34, and 28-32-36.

SECTION 6. AMENDMENT. Section 40-57.3-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57.3-03. Budget - Contracts - Bonds - Capital construction. The governing body of the city shall annually set the budget, if any, under which the committee shall operate. The governing body of the city may contract with any person, firm, association, corporation, or limited liability company to carry out the purposes of the city visitors' promotion fund or the city visitors' promotion capital construction fund created under section 40-57.3-02. The governing body of the city may irrevocably dedicate any portion of revenues from the tax authorized under section 40-57.3-01.1 and may authorize and issue bonds or other evidences of indebtedness in the manner prescribed by section 40-35-08 to be paid by those revenues for any purpose that moneys in the city visitors' promotion capital construction fund may be used; and such tax upon being pledged to payment of bonds or evidences of indebtedness issued pursuant to this section may not be reduced or repealed by the governing body or by the electors of the municipality by any initiated amendment to or referendum of the ordinance referred to in section

40-57.3-01.1, so long as any of such bonds or evidences of indebtedness remain outstanding. The proceeds from the tax imposed under section 40-57.3-01 may not be used for any type of capital construction or purchase of real property. The proceeds from the tax imposed under section 40-57.3-01.1 may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or for tourism or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter.

SECTION 7. REPEAL. Section 23-29-07.7 of the North Dakota Century Code is repealed.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 55

HOUSE BILL NO. 1104

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

ELECTION DAY SERVICE OF PROCESS

AN ACT to amend and reenact section 1-08-09 of the North Dakota Century Code, relating to service of civil process on election day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

1-08-09. Service of civil process on election day. During the day on which any primary, general, or special election is held in this state, or in any district, county, city, or precinct, civil process may not be served on any person entitled to vote at the election within one hundred feet [30.48 meters] from ~~any~~ the outermost entrance leading into the building or facility in which a polling place is located.

Approved April 8, 2005
Filed April 12, 2005

AGRICULTURE

CHAPTER 56

HOUSE BILL NO. 1094

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

USDA FUR PROCEEDS DISPOSITION

AN ACT to amend and reenact section 4-01-17.3 of the North Dakota Century Code, relating to the disposition of furs taken by the United States department of agriculture wildlife services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.3 of the North Dakota Century Code is amended and reenacted as follows:

4-01-17.3. Disposition of proceeds of furs, skins, and specimens taken.

All furs, skins, and specimens taken by hunters and trappers paid out of funds appropriated to carry out section 4-01-17.1 must be disposed of in a manner the agriculture commissioner determines is in the state's best interests. If furs, skins, or specimens are sold, the net proceeds of the sales, up to fifteen thousand dollars per biennium, must be deposited with the state treasurer to be credited to the general fund used by United States department of agriculture wildlife services to fund its program activities that benefit the state's livestock producers.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 57

SENATE BILL NO. 2147

(Senators Taylor, Bowman)
(Representatives Nicholas, S. Meyer, Onstad)
(At the request of the Department of Agriculture)

CERTIFIED BEEF AND LIVESTOCK LOAN PROGRAMS

AN ACT to create and enact a new section to chapter 4-01 and a new section to chapter 6-09 of the North Dakota Century Code, relating to the establishment of a certified beef program and a livestock loan guarantee program; to amend and reenact section 4-14.1-03.1 of the North Dakota Century Code, relating to agricultural grants; to provide for a report; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Certified beef program. The agriculture commissioner may collaborate with the state board of animal health, the North Dakota stockmen's association, North Dakota state university beef systems, and the United States secretary of agriculture to develop a source-verified and process-verified beef marketing program known as the certified beef program.

⁴¹ **SECTION 2. AMENDMENT.** Section 4-14.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority.

1. 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.
2. The commission may administer grant programs consistent with the purpose of this chapter including a:
 - a. A basic and applied research grant program₇;
 - b. A utilization and marketing grant program₇;
 - c. A cooperative marketing grant program₇;
 - d. A nature-based tourism grant program;

⁴¹ Section 4-14.1-03.1 was also amended by section 2 of House Bill No. 1519, chapter 66.

- e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program; and a
 - h. A North American marketing grant program. The
3. As a condition of the grant, the commission may require, by contract, repayment of a grant, in whole or in part, that the recipient repay some or all of the grant if the grant recipient does not fulfill the conditions under which the grant was awarded of the grant. Repayment may be monetary or may be of any other type or method determined by the commission to be in the public interest.

SECTION 3. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Livestock loan guarantee program - Establishment - Rules.

- 1. The Bank of North Dakota shall establish and administer a livestock loan guarantee program that is designed to expand livestock feeding in this state.
- 2. Under the program, the Bank may guarantee a loan made by a bank, a credit union, a savings and loan association, or any other lending institution in this state to the owner of a commercial feedlot that backgrounds or feeds cattle to harvest-ready weight. In the event of a default, the Bank shall pay to the lender the amount agreed upon, provided that the amount may not exceed eighty-five percent of the principal due the lender at the time the claim is approved.
- 3. The Bank shall adopt rules governing additional terms, conditions, and procedures necessary to meet the requirements of this section. The rules must include an administrative fee payable to the Bank and must provide that equity requirements may not exceed fifteen percent.

SECTION 4. REPORT TO COMMITTEES. Between the first and tenth legislative days of the regular session of the sixtieth legislative assembly as selected by the legislative council, the agriculture commissioner, the Bank of North Dakota, and the North Dakota stockmen's association shall provide a joint report regarding the livestock loan guarantee program to the standing agriculture committee of each house of the legislative assembly.

SECTION 5. EXPIRATION DATE. Section 3 of this Act is effective through June 30, 2009, and after that date is ineffective.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 58

HOUSE BILL NO. 1492

(Representatives Monson, S. Kelsh, Nelson, Skarphol)
(Senators Erbele, Heitkamp)

FERAL HEMP SEED

AN ACT to amend and reenact section 4-05.1-05 of the North Dakota Century Code, relating to feral hemp seed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-05. North Dakota state university main research center. The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. ~~The center may, if allowed under federal law, conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops.~~ 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 center may conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 59

HOUSE BILL NO. 1264

(Representatives Aarsvold, Kingsbury, Nicholas)
(Senators Christmann, Flakoll, Taylor)

AGRICULTURAL RESEARCH AND EDUCATION BOARD MEMBERS

AN ACT to amend and reenact section 4-05.1-16 of the North Dakota Century Code, relating to the state board of agricultural research and education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-16 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-16. State board of agricultural research and education - Membership - Terms.

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
 - c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
 - 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 agriculture commissioner, who serves in an ex officio nonvoting capacity;
 - ~~h. g.~~ The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and
 - ~~i. h.~~ Two members of the legislative assembly appointed by the chairman of the legislative council. The chairman shall appoint one member from each political faction. The terms of members are for two years, and members may be reappointed. The legislative

council shall pay the compensation and expense reimbursement for the legislative members.

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~~ four years, beginning on July first. ~~No person~~ An individual may be ~~appointed~~ reappointed to a second ~~five-year~~ four-year term.
4. a. At least ninety days before the ~~conclusion of the initial~~ term of ~~each~~ a member appointed by the ag coalition ~~expires~~, the ag coalition shall provide to the state board of higher education a list of one 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~~ a member appointed by the extension service's multicounty program units ~~expires~~, the units through their advisory groups shall provide to the state board of higher education a list of one 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.
5. If an appointed position becomes vacant, the vacancy must be filled for the unexpired portion of the term in the same manner as the initial appointment except that the ninety-day requirement is waived. An individual appointed under this subsection is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.

CHAPTER 60

SENATE BILL NO. 2044

(Legislative Council)
(Public Services Committee)

SEED DEPARTMENT, LABELING, AND CERTIFICATION

AN ACT to amend and reenact sections 4-09-01, 4-09-02, 4-09-03, 4-09-04, 4-09-05, 4-09-06, 4-09-06.1, 4-09-07, 4-09-08, 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-12, 4-09-13, 4-09-14, 4-09-14.1, 4-09-14.4, 4-09-15, 4-09-16, 4-09-17.1, 4-09-18, 4-09-20.1, 4-09-20.2, 4-09.1-02, 4-09.1-04, 4-25-01, 4-25-02, 4-25-03, and 4-25-04 of the North Dakota Century Code, relating to the state seed department, seed labeling, and certified seed; and to repeal sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code, relating to the state seed arbitration board and labeling requirements for seed labeling permit fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

4-09-01. Definitions. In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the ~~state seed~~ commissioner, means the commissioner's ~~deputies~~ deputy, ~~inspectors~~ inspector, ~~analysts~~ analyst, ~~specialists~~ specialist, and ~~any other aides~~ aide, ~~agents~~ agent, and ~~employees of the commissioner and the seed department~~ employee, when ~~they are~~ each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules ~~duly~~ adopted under to implement this chapter.
3. "Agricultural ~~seeds~~ seed" means the ~~seeds~~ seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural ~~seeds~~ seed, lawn ~~seeds~~ seed, and mixture of ~~such~~ these seeds.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Commission" means the state seed commission.
7. "Commissioner" means the state seed commissioner.

8. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
9. "Department" means the seed department of this state.
10. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
- 5- 11. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
- 6- 12. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts, but not including. The percentage does not include seed which that produces weak, malformed, or obviously abnormal sprouts.
- 7- 13. "Hard seed" means the percentage of seed which, because of hardness or impermeability, does not absorb moisture or germinate under prescribed test but remains hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rule established by the association of official seed analysts a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
8. "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:
- a. Two or more inbred lines;
 - b. One inbred or a single cross with an open pollinated variety; or
 - c. Two varieties or species, except open pollinated varieties of corn (*Zea mays*).
- The second generation or subsequent generations from such crosses must not be regarded as hybrids. Hybrid designations must be treated as variety names.
14. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- 9- 15. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- 40- 16. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.

44. 17. "Labeling" means all labels and other written, printed, or graphic representation in any form accompanying or pertaining to any seed, whether in bulk or in containers, including representations on invoices means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
42. 18. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
19. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
43. 20. "Noxious weed seeds seed" means the seeds of either of the following classifications is divided into three classes defined as:
- a. "Prohibited noxious weed seeds seed" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice including the seeds a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) Scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* Lam.), hoary cress (*cardaria draba* (L.) Desv.), and yellow starthistle (*centaurea solstitialis* L.).
 - b. "Restricted noxious weed seeds seed" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* L.), wild oats (*avena fatua* L.), and quackgrass (*agropyron repens* (L.) Beauv.).
 - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
44. 21. "Official seed-certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

- b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.

15. ~~"Person" means any individual, partnership, corporation, limited liability company, company, society, or association.~~
46. 22. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
47. 23. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
48. 24. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
49. 25. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
20. ~~"Seed department" means the seed department of this state.~~
21. ~~"Seizure" means the legal process carried out by court order against a definite amount of seed.~~
22. 26. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
23. 27. ~~"Treated" means that the a seed has received an application of a seed protectant pesticide which is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings growing therefrom substance, or a claim has been made that the seed has been subjected to a process.~~
28. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
29. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
24. 30. ~~"Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind that is distinct, uniform, and stable.~~ "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive

characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.

- 25- 31. "Vegetable ~~seeds~~ seed" means ~~the seeds a seed of these crops which are a crop that is grown in gardens and a garden or on a truck farms farm, and which are is~~ generally known and sold under the name of vegetable ~~seeds~~ seed within this state.
- 26- 32. "Weed ~~seeds~~ seed" means the ~~seeds seed~~ of ~~all plants a plant~~ generally recognized as ~~weeds a weed~~ within this state, including noxious weed ~~seeds~~ seed.

SECTION 2. AMENDMENT. Section 4-09-02 of the North Dakota Century Code is amended and reenacted as follows:

4-09-02. Seed department - Offices and laboratories.

1. There must be maintained a ~~state seed~~ department ~~to be known as the seed department~~ of the state of North Dakota. ~~Its~~ The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.
2. The ~~state seed~~ commission may locate and establish branch offices and laboratories at other locations in this state as in the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which the ~~seed~~ department is charged with duties and responsibilities.

SECTION 3. AMENDMENT. Section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.

1. The ~~state seed~~ commission is the governing board of the ~~seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this section.~~
2. The ~~state seed~~ commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of

the North Dakota grain dealers association selected by the association's board of directors who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. ~~Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.~~ Each member of the commission is entitled to receive compensation at the rate of seventy-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from ~~such~~ the absent commission member.
4. The commission shall appoint a qualified manager of the ~~seed~~ department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation ~~therefor~~. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of ~~seed~~ the commissioner, the commission may appoint a temporary ~~state seed~~ commissioner to serve until ~~such time as the appointment of a permanent commissioner is appointed.~~ The ~~state seed~~ commissioner has responsibility for preparing the biennial budget and annual salary schedules ~~which that~~ must be approved by the commission ~~prior to before~~ submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and ~~such~~ any other reports as requested by the commission.

SECTION 4. AMENDMENT. Section 4-09-04 of the North Dakota Century Code is amended and reenacted as follows:

4-09-04. Official seal. The official seal of the ~~seed~~ department as recorded in the office of the secretary of state must be used exclusively in connection with the affairs of the ~~seed~~ department. The use of ~~such~~ the seal contrary to the provisions of this chapter or the commissioner's regulations is punishable as provided in section 4-09-24.

SECTION 5. AMENDMENT. Section 4-09-05 of the North Dakota Century Code is amended and reenacted as follows:

4-09-05. Rules and regulations - Authority to make Rulemaking and delegating authority. The commissioner may adopt rules ~~in conformance with the provision of~~ as authorized by chapter 28-32. The commissioner may delegate any duty or power of the commissioner to an agent.

SECTION 6. AMENDMENT. Section 4-09-06 of the North Dakota Century Code is amended and reenacted as follows:

4-09-06. Examination of seed by commissioner - Right of access to premises - Publication of reports - "Stop-sale" order.

1. The commissioner, ~~or the commissioner's agents,~~ shall may inspect, examine, ~~make analysis of~~ analyze, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for planting purposes, at ~~such a~~ a time and place, and to ~~such an~~ an extent, as determined by the commissioner ~~may determine.~~ The
2. At a reasonable time, the commissioner ~~and the commissioner's agents,~~ at all reasonable times, ~~have~~ has the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, ~~when not prohibited by interstate commerce laws and rules, for the purpose of inspecting to inspect, examining~~ examine, and sampling sample any seed or seed plants plant.
3. Any person involved in any way in the handling, transportation, storage, buying, or selling of seed shall cooperate with the commissioner ~~and the commissioner's agents~~ and shall render all possible assistance to aid the commissioner ~~and the commissioner's agents~~ in the carrying out and enforcement of this chapter ~~and the rules adopted under this chapter. The commissioner may publish, or cause to be published, the results of the examination, analyses, and tests of any samples of seed or mixtures of seed, together with any information the commissioner may deem advisable.~~
4. The commissioner ~~or the commissioner's agent~~ may issue and enforce a written ~~or printed~~ "stop-sale" order to the owner or custodian of any lot of ~~agricultural or vegetable seed which that the commissioner or the commissioner's agent finds to be in violation of this chapter; which.~~ The order shall prohibit further sale, conditioning, and movement of ~~such the~~ seed until the commissioner ~~or the commissioner's agent~~ has evidence that the law has been complied with and has issued a release ~~from such "stop-sale" order has been issued.~~ Provided, that in respect to seeds which have. As to seed that has been denied sale, conditioning, and movement as provided in this section, the owner or custodian of such seeds has the right to appeal from the order to a court of competent jurisdiction in the locality in which the seeds are seed is found, praying for a judgment as to the justification of the order and for the discharge of the seed from the order prohibiting the sale, conditioning, and movement in accordance with the findings of the court. This section subsection does not limit the right of the commissioner or the commissioner's agent to proceed as authorized by other sections of this chapter.

SECTION 7. AMENDMENT. Section 4-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-06.1. Inspection - Export certification - Fees. The commissioner ~~or the commissioner's authorized representative~~ may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. ~~Certificates~~ The commissioner may be withheld withhold the certificate if the product does not meet sanitary requirements and if all state licensing and bonding requirements ~~have not been met~~. The name and address of the consignee on the phytosanitary certificate is confidential.

SECTION 8. AMENDMENT. Section 4-09-07 of the North Dakota Century Code is amended and reenacted as follows:

4-09-07. Official laboratories - Location - Certificates and reports - Publication. ~~The commissioner, subject to the approval and supervision of the state seed commission, shall provide and maintain under the commissioner's direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to the commissioner by the state board of higher education. The commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by the university at convenient times.~~

1. ~~When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the commissioner or a duly authorized agent, it, the document must be accepted as prima facie evidence of the statements therein contained in the document, but the commissioner or the commissioner's analysts are is subject to court order for a review of findings as set forth by such certificates or reports in the document.~~
2. ~~The commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by the commissioner and may enlarge expand the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. The commissioner also may publish lists of certified seed.~~

SECTION 9. AMENDMENT. Section 4-09-08 of the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Fees for tests. ~~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 establish and charge fees for laboratory tests and services.~~

SECTION 10. AMENDMENT. Section 4-09-10 of the North Dakota Century Code is amended and reenacted as follows:

4-09-10. Labeling requirements for agricultural seed.

1. 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~~ agricultural seed; a conspicuous, plainly written or printed label or tag in the English language giving with the following information required by this section, which ~~statement~~ may not be modified or denied in the labeling ~~or on another label attached to the container.~~

4. a. 2. In ~~seeds~~ seed of wheat, durum, barley, oats, rye, soybeans, field pea, dry beans, and flax, the label must contain 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". Seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand.
- b. 3. In ~~seeds~~ seed of canola, the label must contain a statement that the seed ~~must be~~ is certified by the commissioner as meeting the standards of this chapter or ~~have been~~ certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter.
- c. 4. In all other ~~seeds~~ seed not named in ~~subdivisions~~ subsections 2 and 3, the label must contain 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.
- d. 5. 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, the label must contain each component in excess of one percent of the whole ~~must be~~ named together with the percentage by weight of each. ~~All components~~ Each component must be listed in the order of ~~their~~ its predominance. ~~Where~~ When more than one component is named, the word "mix", "mixed", "mixture", or ~~the word "mixed", "blend"~~ must be ~~shown conspicuously on the label~~ appropriately stated with the name of the mixture or blend.
2. 6. For each container of agricultural seed, the label must contain:
 - a. Lot number or other lot identification.
 3. b. Origin The origin, state or foreign country, where grown. If the origin is unknown, that fact must be stated.
 4. c. Percentage The percentage by weight of all weed ~~seeds~~ seed.
 5. d. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed ~~seeds~~ seed present, if the restricted noxious weed ~~seeds are~~ seed is present singly or collectively in amounts:
 - a. ~~In~~ in seeds of grasses and small seeded legumes; in excess of thirteen seeds per pound [453.59 grams]; ~~and, or~~

- b. ~~In~~ 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. e. ~~Percentage~~ Percentage The percentage by weight of agricultural seed ~~which that~~ may be designated as crop seed, other than those required to be named on the label.
- 7. f. ~~Percentage~~ Percentage The percentage by weight of inert matter.
- 8. ~~For each agricultural seed:~~
 - a. g. ~~Percentage~~ Percentage The percentage of germination for each agricultural seed, exclusive of hard seed. ~~Total; the percentage of hard seed if present for each agricultural seed; and if desired the total germination and hard seed may be stated as such; if desired for each agricultural seed.~~
 - b. ~~Percentage of hard seed, if present. Total germination and hard seed may be stated as such; if desired.~~
 - c. ~~The~~ In addition, the calendar month and year the test was completed to determine ~~such~~ these percentages.
 - 9. h. The full name and address of the person who labeled ~~said the~~ seed; or who sells, offers for sale, or exposes ~~said the~~ seed for sale within this state.
- 10. i. ~~For If the seed is treated seeds as defined in this chapter, for which a separate label may be used:~~
 - a. ~~A,~~ a word or statement indicating that the seed has been treated;
 - b. ~~The the~~ commonly accepted, coined, chemical or abbreviated chemical ~~(generic)~~ name of the applied ~~seed protectant pesticide substance;~~ and
 - c. ~~If 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 prohibiting use for food or, feed, or oil purposes". The caution and for mercurials and similar toxic substances must be a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.~~
- 11. j. ~~That the~~ The seed container ~~itself~~ is a hermetically sealed container as defined by rules adopted by the commissioner.
- 12. k. 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 11. AMENDMENT. Section 4-09-11 of the North Dakota Century Code is amended and reenacted as follows:

4-09-11. Labeling requirements for vegetable seed.

1. Each container of vegetable seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for ~~sowing~~ planting purposes within this state ~~shall~~ must bear ~~thereon~~, or have attached ~~thereto~~, in a conspicuous place a 1 plainly ~~written or printed label or tag~~ in the English language with the information required by this section, which may not be modified or denied in the labeling.
4. 2. For vegetable ~~seeds~~ seed in containers of one pound [45 kilograms] or less, such label or tag ~~must give the following information~~ packets as prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices:
 - a. The name of kind and variety of seed.
 - b. Lot identification by lot number or other means.
 - c. For ~~seeds which germinate~~ seed that germinates less than the standards as set forth in section 201.34 of the rules and regulations under the Federal Seed Act, "Service and Regulatory Announcement No. 156", and subsequent revisions:
 - (1) Percentage standard established by the commissioner, the percentage of germination, exclusive of hard seed.
 - (2) Percentage; the percentage of hard seed, if present.
 - (3) The calendar month and year the test was completed.
 - (4) The; and the words "below standard" in not less than eight point eight-point type.
 - e. d. The ~~full~~ name and address of the person who labeled ~~said the~~ seed, or who sells, offers for sale, 1 or exposes ~~said the~~ seed for sale within this state.
 - d. For treated seed as defined in this chapter for which a separate label may be used:
 - (1) A word or statement indicating that the seed has been treated.
 - (2) The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance.
 - (3) 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.
 - e. That the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner. The calendar month and year the germination test was completed and a statement

stating the sell by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test.

- f. For seeds placed in a germination medium, mat, tape, or other device in a way as to make it difficult to determine the quantity of seed without removing the seed, a statement to indicate the minimum number of seeds in the container.

- ~~2.~~ 3. For vegetable seeds seed in containers of more than one pound [~~45~~ kilograms], such label or tag must give the following information other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

- a. The name of each kind and variety of vegetable seed present in excess of five percent and the percentage by weight of each in order of its predominance.
- b. Lot number or other lot identification.
- c. ~~Origin, meaning the state or foreign country where grown. If the origin is unknown, that fact must be stated.~~
- d. ~~The name and rate of occurrence per pound [~~45~~ kilograms] of each kind of restricted noxious weed seeds present.~~
- e. For each named vegetable seed:

~~(1) Percentage, the percentage of germination, exclusive of hard seed. Total, and the percentage of hard seed if present, and if desired, the total germination and hard seed may be stated as such, if desired.~~

~~(2) Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.~~

~~(3) The In addition, the calendar month and year the test was completed to determine such these percentages.~~

- f. d. The ~~full~~ name and address of the person who labeled ~~said~~ the seed, or who sells, offers for sale, or exposes said seed for sale within this state.

- e. The labeling requirements for vegetable seed in a container of more than one pound [~~45~~ kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser.

- ~~g.~~ 4. For vegetable seed in any size container, the label for treated seed ~~as defined in this chapter,~~ for which a separate label may be used:

- (1) A, must contain a word or statement indicating that the seed has been treated.
 - (2) ~~The;~~ the commonly accepted, coined, chemical or abbreviated chemical (~~generic~~) name of the applied substance.
 - (3) ~~If; and 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 prohibiting~~ use for food or, feed, or oil purposes". ~~The caution~~ and for mercurials and similar toxic substances ~~shall be~~ a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.
- h- 5. The labeling requirements for vegetable ~~seeds~~ seed in containers of more than one pound [~~.45 kilograms~~ kilogram] are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.
- i- 6. ~~That~~ For vegetable seed in any size container, the label must state the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner.

SECTION 12. AMENDMENT. Section 4-09-11.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-11.1. Labeling requirements for flower ~~seeds~~ seed.

- 1. Each container of flower ~~seeds which~~ seed that is sold, offered for sale, exposed for sale, or transported within this state for ~~sewing~~ planting purposes; ~~shall must~~ bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous ~~place a~~, plainly ~~written or~~ printed label or tag in the English language; ~~giving with the following information required by this section,~~ which statement may not be modified or denied in the labeling ~~or on another label attached to the container.~~
- 4- 2. For all flower ~~seeds~~:
 - a- A seed, the label must contain a word or statement indicating whether the seed has been treated.
 - b- ~~The;~~ the commonly accepted coined, chemical, or abbreviated chemical (~~generic~~) name of the applied substance or description of the process used.
 - e- ~~If; and 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 prohibiting~~ use for food, feed, or oil purposes". ~~The caution~~ and for mercurials and similarly toxic substances ~~must be~~ a poison statement and symbol.

- d. If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective ~~(date of expiration)~~.
2. 3. For flower ~~seeds~~ seed in packets prepared for use in home gardens or household plantings or flower ~~seeds~~ seed in preplanted containers, mats, tapes, or other planting devices, the label must contain:
- a. For all kinds of flower ~~seeds~~:
 - (1) ~~The seed, the name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under the provisions of this chapter.~~
 - (2) ~~The required by the commissioner, the calendar month and year the seed was tested or the year for which the seed was packaged.~~
 - (3) ~~The, and the~~ name and address of the person who labeled ~~said the seed,~~ or who sells, offers, or exposes ~~said the~~ seed for sale within this state.
 - b. For ~~seeds~~ seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under ~~the provisions of this chapter:~~
 - (1) ~~Percentage, the percentage~~ of germination exclusive of hard seeds.
 - (2) ~~The and the~~ words "below standard" in not less than eight-point type.
 - c. For ~~seeds~~ seed placed in a germination medium, mat, tape, or other device ~~in such a way so~~ as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
3. 4. For flower ~~seeds~~ seed in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices the label must contain:
- a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter.
 - b. The lot number or other lot identification.
 - c. The calendar month and year that the seed was tested or the year for which the seed was packaged.
 - d. The name and address of the person who labeled ~~said the~~ seed or who sells, offers, or exposes ~~said the~~ seed for sale within this state.

- e. For those kinds of seed for which standard testing procedures are prescribed:
 - (1) ~~Percentage~~, the percentage germination exclusive of hard seed-
 - (2) ~~Percentage and the percentage~~ of hard seed, if present.

SECTION 13. AMENDMENT. Section 4-09-11.2 of the North Dakota Century Code is amended and reenacted as follows:

4-09-11.2. Labeling requirements for tree and shrub seeds.

1. Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transported within this state for ~~sewing~~ planting purposes, must bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous place a, plainly ~~written~~ or printed label or tag in the English language, giving the ~~following~~ information required by this section, which ~~statement must~~ may not be modified or denied in the labeling or ~~on another label attached to the container~~, except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to ~~said the~~ invoice if each ~~bag or other~~ container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. ~~Each bag or container that is not so identified must carry complete labeling:~~
- 4- 2. For all tree and shrub ~~seeds~~ seed, the label must contain:
 - a. A word or statement indicating whether the seed has been treated-
 - b- ~~The;~~ the commonly accepted coined, chemical, or abbreviated chemical (~~generic~~) name of the applied substance or description of the process used-
 - e- ~~If;~~ and 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 prohibiting use for food or, feed, or oil purposes".~~ The caution and for mercurials and similarly toxic substances ~~must be a poison statement and symbol.~~
 - d- If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (~~date of expiration~~).
2. For all tree and shrub seeds ~~subject to this chapter:~~
 - a- ~~b.~~ Common ~~The common~~ name of the species of seed (and subspecies, if appropriate).
 - b- ~~c.~~ The scientific name of the genus and species (and subspecies, if appropriate).
 - e- ~~d.~~ Lot ~~The lot~~ number or other lot identification.
 - d- Origin:

- (4) ~~e.~~ e. ~~For The origin for~~ seed collected from a predominately indigenous stand; as identified by the area of collection the trees are growing and collected given by latitude and longitude, ~~or~~ geographic description, or political subdivision ~~such as state or county.~~
- (2) ~~For and for~~ seed collected from other than a predominantly indigenous stand; identify as identified by the area of collection and the origin of the stand place from which the seeds or plants were originally introduced or state "origin not indigenous".
- ~~e.~~ f. The elevation or the upper and lower limits of elevations within which ~~said the~~ seed was collected.
- ~~f.~~ g. ~~Purity~~ The purity as a percentage of pure seed by weight.
- ~~g.~~ h. For those species for which standard germination testing procedures are prescribed, the ~~following~~:
- (1) ~~Percentage~~ percentage germination exclusive of hard seed-
- (2) ~~Percentage~~; the percentage of hard seed, if present-
- (3) ~~The~~; and the calendar month and year test was completed to determine ~~such the~~ percentages.
- ~~h.~~ In lieu of ~~paragraphs 1, 2, and 3 of this~~ subdivision g, the seed may be labeled "Test is in process, results will be supplied upon request".
- ~~i.~~ For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected.
- ~~j.~~ i. The name and address of the person who labeled ~~said the~~ seed or who sells, offers, or exposes ~~said the~~ seed for sale within this state.

SECTION 14. AMENDMENT. Section 4-09-12 of the North Dakota Century Code is amended and reenacted as follows:

4-09-12. Invoice and records. Each person whose name appears on the label ~~handling agricultural, vegetable, flower, or tree and shrub seeds subject to this chapter, and handles seed~~ shall keep for a period of ~~two~~ three years complete records of each lot of seed handled, and shall keep ~~for a period of one year~~ a file sample of each lot of seed for a period of one year after final disposition of ~~said the~~ lot. All records pertaining to the lot ~~or lots~~ involved must be accessible for inspection by the commissioner ~~or his agents~~ at any time during customary business hours.

SECTION 15. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of ~~December 31, June 30, 2002~~ 2005, except that

the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

SECTION 16. AMENDMENT. Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14. Prohibitions.

1. ~~It is unlawful for any~~ A person ~~to~~ may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state if:
 - a. ~~The~~ Unless for agricultural seed, a test to determine the percentage of germination required under sections section 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
 - b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
 - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;
 - d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a twelve-month period, exclusive of the calendar month in which the retest was completed;
 - b. e. ~~The~~ If the seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;

- e. f. ~~There~~ If there has been false or misleading advertising in connection with the seed;
 - d. g. ~~The~~ If the seed contains prohibited noxious weed seeds;
 - e. h. ~~With regard to~~ Unless for agricultural or vegetable seed, the seed is ~~not~~ labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
 - f. i. ~~The~~ If the seed is designated, offered, represented, or advertised under any name or identification other than ~~that~~ the name by which ~~it~~ the seed was known originally;
 - g. j. ~~The~~ If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
 - h. k. ~~The~~ If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. Any person, ~~under rules adopted by the commissioner,~~ may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any ~~tests~~ test the commissioner considers necessary, and if the commissioner finds as a result of the ~~tests~~ test that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name.
3. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.
2. 4. ~~It is unlawful for any~~ A person in this state ~~to~~ may not:
- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
 - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
 - c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
 - d. Fail to comply with a "stop-sale" order;
 - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;

- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
- g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner ~~or the commissioner's agent~~, and only for the purpose specified in ~~such~~ this written permission;
- h. Use the name of the ~~state seed~~ department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

SECTION 17. AMENDMENT. Section 4-09-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.1. Seed sales - Seed labeling fee permit - Exception. ~~No~~ A person may ~~not~~ label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the ~~seed department~~ commissioner and has been issued to the labeler pursuant to section 4-09-14.4.

SECTION 18. AMENDMENT. Section 4-09-14.4 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. ~~The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to~~ may issue a permit to any person to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the ~~seed department~~ commissioner with an annual statement of all seeds sold in ~~North Dakota~~ this state when requested by the ~~seed~~ commissioner. Statements that must be furnished for each reporting period, must be delivered to the commissioner not later than thirty-one days after the end of each reporting period, and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show ~~such any~~ any information in connection ~~therewith~~ with the permit as the commissioner may require as part of the label on all seed sold. ~~The commissioner or the commissioner's authorized agent~~ The commissioner has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements.

SECTION 19. AMENDMENT. Section 4-09-15 of the North Dakota Century Code is amended and reenacted as follows:

4-09-15. Exemptions. ~~Sections 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-14.1, 4-09-14.2, 4-09-14.3, and 4-09-14.4 shall~~

1. This chapter does not apply to:

- ~~4.~~ a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.

- 2- b. Seed or grain that is not intended for planting purposes.
 - a- The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the ~~seed department~~ commissioner.
 - b- It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain.
 - e- A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
 - 3- c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning; ~~provided that.~~ However, any labeling or other representation ~~which may be made~~ with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.
 - 4- d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
 - 5- e. A farmer who grows ~~his~~ the farmer's own seed and sells only ~~his~~ the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. ~~No~~ However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter.
2. A person ~~shall be~~ is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub ~~seeds which were seed~~ that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified by through examination thereof, unless such the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take ~~such~~ other precautions as may have been necessary to ensure that the seed was properly identified.

SECTION 20. AMENDMENT. Section 4-09-16 of the North Dakota Century Code is amended and reenacted as follows:

4-09-16. Certified seed. The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of ~~such the~~ seed for market.
2. Designate kinds, varieties, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.

3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures ~~such~~ the labels, seals, certificates, or the containers of ~~such~~ the seed must bear.
4. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
5. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording ~~such~~ the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all ~~such~~ the fees and charges.

SECTION 21. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended; [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, ~~2004~~ 2005], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 22. AMENDMENT. Section 4-09-18 of the North Dakota Century Code is amended and reenacted as follows:

4-09-18. Certified seed standards.

1. The rules and requirements for certification of crop seeds, other than potatoes, must be ~~those prescribed and set forth published~~ in the ~~state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions of the bulletin.~~
2. The rules and requirements for seed potato certification must be ~~those prescribed and set forth published~~ in the ~~state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.~~

SECTION 23. AMENDMENT. Section 4-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-20.1. Liability of seed commission, seed department, commissioner, and certified or noncertified agricultural seed producers. ~~No warranties~~ A warranty of any kind, either expressed or implied, including ~~warranties~~ a warranty of merchantability, fitness for a particular purpose, or absence of disease, ~~are is not~~ made by the ~~state seed~~ commission, the ~~seed~~ department, the commissioner ~~or the commissioner's employees~~, or certified or noncertified agricultural seed producers as to the quantity or quality of the crop produced from the agricultural seeds or as to other produce which is inspected and certified, except as provided in this section. The ~~only~~ sole warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the ~~state seed~~ department or United States department of agriculture. The commissioner ~~and the commissioner's employees function functions and serve~~ serves only in an official regulatory manner.

SECTION 24. AMENDMENT. Section 4-09-20.2 of the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman 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 agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation 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 compensation under this subsection may not 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.
2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

SECTION 25. AMENDMENT. Section 4-09.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-02. Seed commissioner Commissioner - Duties. The commissioner may establish commodity grades and inspection services for the purpose of making inspection and otherwise providing for the proper handling and marketing of the ~~agricultural commodities defined in this chapter and may adopt rules necessary for and consistent with the provisions of this chapter.~~ The

commissioner shall appoint a chief inspector and other ~~agents, inspectors, assistants, and clerical aides~~ employees as are necessary to assist, represent, and act for the commissioner in carrying out the provisions of this chapter. The commissioner shall fix the salaries of employees of the commission within the limits of legislative appropriations therefor.

SECTION 26. AMENDMENT. Section 4-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-04. Cooperation with departments and bureaus. The commissioner may cooperate with the United States department of agriculture or any bureau or division thereof ~~of the department, and with a similar state inspection service departments of the several states, and with any person; with the intent and purpose that the grade inspection service in this state, and so that any or all of the~~ grade certificates issued on North Dakota the commodities, must be in this state are officially recognized and accepted elsewhere in the United States, ~~and to protect and promote the interests of any and all persons~~ each person having an interest in the commodities grown or handled in this state, and to provide for any necessary joint arrangements to further the purpose of this chapter.

SECTION 27. AMENDMENT. Section 4-25-01 of the North Dakota Century Code is amended and reenacted as follows:

4-25-01. Definitions Definition of agricultural seed. In this chapter unless the context or subject matter otherwise requires:

1. ~~The, the~~ term "agricultural seed" includes seeds of grass, forage, cereals, fiber, and oil crops, and any other kinds of seeds commonly recognized within this state as agricultural or field seeds and mixtures of ~~such these~~ seeds for ~~sowing or~~ planting purposes.
2. "Person" means any individual, partnership, corporation, limited liability company, company, society, or association, except a farmer resident of North Dakota who may sell seed of that person's own production.

SECTION 28. AMENDMENT. Section 4-25-02 of the North Dakota Century Code is amended and reenacted as follows:

4-25-02. Prohibitions. ~~It is unlawful for any~~

1. A person in this state to may not accept full or partial payment in connection with the sale of any agricultural seeds to be delivered to the buyer at a later date, unless each ~~and every~~ transaction is accompanied by a written sales agreement or contract ~~which must contain thereon that contains~~ the following provisions:
 - 1- a. The date and place of the transaction.
 - 2- b. The signature and address of the buyer and the seller or the agent acting for the seller.
 - 3- c. The number of units and the price per unit.
 - 4- d. The total value of the transaction.

- 5- e. The total amount of the full or partial payment made to the seller by the buyer.
 - 6- f. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, field pea, and edible beans.
 - 7- g. The class of the seed to be delivered, and if the seed is not certified, then the minimum germination and seed purity percentages must be stated. If the seed is certified, the words "breeders", "foundation", "registered", or "certified", as the case may be, must be shown.
 - 8- h. The date of delivery or the latest date at which delivery is to be made.
 - 9- i. The place of delivery.
2. Any provision in any written order or contract, which is contrary to any of the provisions of this section hereby is declared to be against public policy and void.

SECTION 29. AMENDMENT. Section 4-25-03 of the North Dakota Century Code is amended and reenacted as follows:

4-25-03. Penalty. Any person violating ~~the provisions of sections 4-25-01 and section~~ 4-25-02 is guilty of a class B misdemeanor.

SECTION 30. AMENDMENT. Section 4-25-04 of the North Dakota Century Code is amended and reenacted as follows:

4-25-04. Repurchase contracts - Bonding requirement for nonresident seed dealers Nonresident seed dealer license. Any nonresident person or that person's agent shall pay an annual license fee of twenty-five dollars to the commissioner before engaging in the business of selling any agricultural grain or grass seed and entering into any contract with a purchaser whereby that person agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. The license is renewable annually on January first of each year. At the time of applying for a license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section must be deposited in the seed department revolving fund. Any nonresident person engaged in the business in selling agricultural seed directly to the consumer in this state shall submit an annual application for a nonresident seed dealer license and submit an annual license fee, in an amount determined by the commission, to the state seed commissioner. A list of agents representing the nonresident company in this state must accompany the application.

SECTION 31. REPEAL. Sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code are repealed.

CHAPTER 61

SENATE BILL NO. 2277

(Senators Flakoll, Christmann, Klein)
(Representatives Berg, Brandenburg, Nicholas)

POLITICAL SUBDIVISION SEED REGULATION PROHIBITED

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to limitations on regulation of seed by political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority of political subdivisions regarding seed. A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 62

SENATE BILL NO. 2326

(Senators Tallackson, Klein)

(Representatives Headland, Nicholas, Pollert, Solberg)

SEED POTATO CERTIFICATION

AN ACT to amend and reenact sections 4-10-01 and 4-10-06.3 of the North Dakota Century Code, relating to seed potato certification requirements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-01 of the North Dakota Century Code is amended and reenacted as follows:

4-10-01. Definitions. In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules and regulations of the state seed department.
3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules ~~and regulations~~ of the state seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb means the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.

8. ~~"Person" means both the singular and plural, as the case requires, and includes individuals, copartnerships, companies, societies, associations, firms, corporations, or limited liability companies.~~
9. "Potatoes" means what is commonly called and known as white or Irish potatoes.
40. 9. "State seed department" means the seed department of the state of North Dakota.
10. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

SECTION 2. AMENDMENT. Section 4-10-06.3 of the North Dakota Century Code is amended and reenacted as follows:

4-10-06.3. 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~~:

1. a. An official grade certificate describing the grade of the potatoes; or
a
- b. 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; and
2. Any other document or certificate required for the importation of seed potatoes by the state, province, territory, or country of origin, including test results issued by a laboratory approved by the United States department of agriculture's animal and plant health inspection service.

SECTION 3. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 63

HOUSE BILL NO. 1247

(Representatives Aarsvold, D. Johnson, Monson, Pollert)
(Senators Freborg, Tallackson)

DRY BEAN COUNCIL AND DISTRICTS

AN ACT to amend and reenact sections 4-10.3-03 and 4-10.3-04 of the North Dakota Century Code, relating to the dry bean council and dry bean districts; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 dry bean council - Membership - Election - Term.

1. The North Dakota dry bean 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 agriculture commissioner is an ex officio member of the council.
2. 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.
3. 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.
4. 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.
5. 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. Elections must be held before April first of each year.
6. No elected member of the council is eligible to serve more than ~~two~~ three consecutive three-year terms.

SECTION 2. AMENDMENT. Section 4-10.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-04. Dry bean districts - Establishment. The following dry bean districts are established for the purpose of dividing the state into districts containing as nearly equal 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, and Towner, Walsh, Ward, and Williams Counties.~~
2. District two consists of ~~Grand Forks County~~ Ramsey and Walsh Counties.
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~~ Grand Forks and Nelson Counties.
4. District four consists of Griggs, Steele, and Traill County Counties.
5. District five consists of ~~the counties of Adams, Bowman, Barnes, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Slope, and Stark and Stutsman Counties.~~
6. District six consists of Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams Counties.

SECTION 3. APPLICATION. The initial term of the member representing district six must be arranged so that not more than two terms expire each year.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 64

SENATE BILL NO. 2403

(Senators O'Connell, Nething, Robinson)
(Representatives Nicholas, Solberg)

BARLEY DISTRICT BOUNDARIES

AN ACT to amend and reenact section 4-10.4-04 of the North Dakota Century Code, relating to barley districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-04. Barley districts - Establishment. The following barley districts are established for the purpose of dividing the state into districts containing as nearly equal barley production as practicable:

1. State barley council district number one consists of the counties of Benson, Cavalier, Pembina, Walsh, Towner, and Ramsey.
2. State barley council district number two consists of the counties of Grand Forks, McLean, Nelson, Traill, Sheridan, Steele, Wells, Eddy, Foster, and Griggs.
3. State barley council district number three consists of the counties of Cass, Barnes, Burleigh, Emmons, Kidder, Logan, McIntosh, Richland, Ransom, LaMoure, Dickey, ~~and Sargent, and Stutsman.~~
4. State barley council district number four consists of the counties of Bottineau, Rolette, McHenry, Pierce, ~~Benson, Sheridan, Wells, Burleigh, Kidder, Stutsman, Emmons, Logan, and McIntosh~~ and Renville.
5. State barley council district number five consists of the counties of ~~Renville~~, Burke, Divide, Williams, Mountrail, Ward, ~~McLean~~, McKenzie, Dunn, Mercer, Oliver, Sioux, Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and Bowman.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 65

SENATE BILL NO. 2236

(Senators Christmann, Bowman, Taylor)
(Representatives Haas, Pollert, Schmidt)

CORN ASSESSMENTS

AN ACT to amend and reenact subsection 4 of section 4-10.6-01 and section 4-10.6-09 of the North Dakota Century Code, relating to collection of assessments on corn.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 4-10.6-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Designated handler" means any ~~person accepting for shipment, or otherwise acquiring an interest in or to~~ grain warehouse, licensed grain buyer, processing plant, or ethanol plant which purchases corn from a grower. The term includes and any person having a claim against the ~~producer~~ grower, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.

SECTION 2. AMENDMENT. Section 4-10.6-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-09. Collection of assessment. Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler. If a grower sells corn to a person who is not a designated handler, the grower shall forward the assessment to the council at the time and in the manner prescribed by the council.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 66

HOUSE BILL NO. 1519

(Representatives Nicholas, Aarsvold, Iverson, Svedjan)
(Senators Flakoll, Grindberg)

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION GRANTS

AN ACT to amend and reenact sections 4-14.1-02 and 4-14.1-03.1 of the North Dakota Century Code, relating to agricultural products utilization commission grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-02. Agricultural fuel tax fund - Purposes. There is hereby created in the state treasury, a fund, ~~to be known as the agricultural fuel tax fund,~~ which must be used to fund programs for the enhancement of agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission necessary to implement the purposes of this chapter.

⁴² **SECTION 2. AMENDMENT.** Section 4-14.1-03.1 of 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, a utilization and marketing grant program, a cooperative marketing grant program, a farm diversification grant program, an agricultural prototype development grant program, an agricultural technologies grant program, and a North American marketing grant program. The commission may require, by contract, repayment of a grant, in whole or in part, if the grant recipient does not fulfill the conditions under which the grant was awarded.

Approved March 9, 2005
Filed March 9, 2005

⁴² Section 4-14.1-03.1 was also amended by section 2 of Senate Bill No. 2147, chapter 57.

CHAPTER 67

SENATE BILL NO. 2270

(Senators Trenbeath, Espeguard, Nething)
(Representatives Kingsbury, Nelson)

ETHANOL PLANT PRODUCTION INCENTIVES

AN ACT to create and enact sections 4-14.1-07.1 and 4-14.1-07.2 of the North Dakota Century Code, relating to ethanol plant production incentives; to amend and reenact sections 4-14.1-08 and 4-14.1-10 of the North Dakota Century Code, relating to the ethanol production incentive fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 4-14.1-07.1 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.1. Ethanol plant production incentives - Report to budget section.

1. a. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.
3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

SECTION 2. Section 4-14.1-07.2 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.2. Ethanol production incentives - Payments for increased production. If an ethanol plant that was in operation in this state before July 1, 1995, increases its production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production capacity during any twelve-month period beginning on or after the effective date of this Act, that plant is eligible to receive ethanol production incentive payments under section 4-14.1-08 on its increased production.

⁴³ **SECTION 3. AMENDMENT.** Section 4-14.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-08. Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by ~~the American coalition for ethanol~~ AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
- c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization

⁴³ Section 4-14.1-08 was also amended by section 30 of Senate Bill No. 2018, chapter 46.

commission shall subtract zero from any amount payable under this section.

- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

⁴⁴ **SECTION 4. AMENDMENT.** Section 4-14.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-10. Ethanol production incentive fund - Continuing appropriation.

There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections ~~4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, and 4-14.1-09.~~

Approved April 22, 2005

Filed April 25, 2005

⁴⁴ Section 4-14.1-10 was also amended by section 32 of Senate Bill No. 2018, chapter 46.

CHAPTER 68**SENATE BILL NO. 2156**

(Senators Klein, Erbele, Taylor)

(Representatives Brandenburg, Mueller, Pollert)

**AGRICULTURAL PROMOTION GROUP
COLLOCATION**

AN ACT to repeal section 4-24-07 of the North Dakota Century Code, relating to the collocation of agricultural promotion groups.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 4-24-07 of the North Dakota Century Code is repealed.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 69

HOUSE BILL NO. 1272

(Representatives Headland, Brandenburg, Mueller, Nicholas)
(Senators Erbele, Klein)

WHEAT COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 4-28-03 of the North Dakota Century Code, relating to membership of the wheat commission; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. ~~There is hereby created the~~

1. The North Dakota state wheat commission ~~which~~ consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a ~~bona fide~~ resident of and a qualified elector in the district the member represents, and must have farming operations in ~~such the district, and must have been actually engaged in the production of wheat and have derived a substantial portion of the member's income therefrom for at least five years next preceding the member's appointment or election.~~ The member from the state at large must have similar qualifications except as limited by district lines. An individual is not eligible to be a member of the wheat commission if that individual requested a refund under section 4-28-07 during the twelve-month period before the date on which the term sought by the individual would commence. This ineligibility does not apply to an individual who requested a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. Each member of the wheat commission must be actively engaged in the production of wheat. A member of the wheat commission who elects not to plant wheat for one growing cycle may continue to serve on the commission if the member continues to be actively involved in farming. If a member elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's office vacant. A member of the wheat commission is not eligible to receive a refund under section 4-28-07; however, a member may request a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. The commission may declare a member's position vacant if the member fails to attend two consecutive commission meetings.
2. Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural

experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

3. Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.
4. At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable, except that a producer may vote only in the producer's county of residence. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. To be eligible to hold the position of county representative, an individual must be actively engaged in the production of wheat. A county representative who elects not to plant wheat for one growing cycle may continue to serve as a county representative if the individual continues to be actively involved in farming. If a county representative elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's position vacant. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of

all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers.

5. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of revising the process for appointing or electing individuals to the North Dakota wheat commission. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 70

HOUSE BILL NO. 1518

(Representatives Nicholas, Boucher, Brandenburg, Mueller, Uglem)
(Senator Warner)

WHEAT COMMISSION AND LEVY

AN ACT to create and enact a new section to chapter 4-28 of the North Dakota Century Code, relating to the wheat tax levy; to amend and reenact sections 4-28-06 and 4-28-07 of the North Dakota Century Code, relating to the North Dakota wheat commission; to repeal section 4-28-07 of the North Dakota Century Code, relating to the wheat tax levy; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-06 of the North Dakota Century Code is amended and reenacted as follows:

4-28-06. Wheat commission - Duties and powers. In the administration of this chapter, the commission has the following powers, authority, and duties:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
2. To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer.
3. To search for and promote new uses of wheat and wheat products.
4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.
5. To lease, purchase, own, equip, maintain, and operate a commission office.
6. To appoint, employ, bond, discharge, fix the compensation and prescribe the duties of such administrative, clerical, technical and other personnel, employees, and agents as it may deem necessary to conduct the business and affairs of the commission.
7. To accept donations of funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, depositing all funds so received in the state wheat commission fund in the state treasury.
8. To promote North Dakota opportunities as afforded by the development of the St. Lawrence seaway provide market maintenance and development services, utilization research, transportation research, and education.

9. To address trade and domestic issues.
10. To seek improvement in the export quality of wheat.
- 40- 11. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.
- 44- 12. To prosecute in the name of the state of North Dakota any suit or action to enforce collection or assure payment of the tax or assessment authorized by the provisions of this chapter, and to sue and be sued in the name of the commission.
13. To engage in any other related activities.

⁴⁵ **SECTION 2. AMENDMENT.** Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy.

1. a. A tax of ~~ten~~ fifteen 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.
- b. 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] is not accurately determined at the time of the lien, pledge, or mortgage.
- c. 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 the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
- b. 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.

⁴⁵ Section 4-28-07 was repealed by section 4 of House Bill No. 1518, chapter 70.

- c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to 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.
3. 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.
4. The commission may use the amount raised by two mills of the levy provided for in this section to support the commission's involvement in trade issues throughout the world.
- ~~5. The commission may use the~~ shall expend an amount at least equal to that raised by up to two mills of the levy provided for in this section for the purposes of providing market maintenance and development services; utilization research; transportation research; and education; addressing domestic policy issues; and engaging in other related activities; or for the purposes of contracting for market maintenance and development services; utilization research; transportation research; and education; addressing domestic policy issues; and engaging in other related activities; to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. The commission shall expend an amount at least equal to that raised by three mills of the levy provided for in this section to pay any debts for legal services incurred by the commission, until the debts for legal services are paid in full.
6. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
7. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

SECTION 3. A new section to chapter 4-28 of the North Dakota Century Code is created and enacted as follows:

Wheat tax levy.

1.
 - a. A tax of twelve 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.
 - b. 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] is not accurately determined at the time of the lien, pledge, or mortgage.
 - c. 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 the manner prescribed by the commission.
2.
 - a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided for in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
 - b. 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.
 - c. If no request for refund has been made within the period prescribed in this subsection, the producer is presumed to have agreed to the deduction. A producer that, for any reason, has paid the tax more than once on the same wheat, upon furnishing proof of that payment to the commission, is entitled to a refund of the overpayment.
3. To inform the producer, the commission 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 state and federal agencies and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from the money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of

membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

5. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
6. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

⁴⁶ **SECTION 4. REPEAL.** Section 4-28-07 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. The increase in the levy imposed by section 2 of this Act applies to all sales occurring on and after the day of the next calendar quarter occurring at least thirty days after the effective date of this Act.

SECTION 6. EFFECTIVE DATE. Sections 3 and 4 of this Act become effective on July 1, 2009.

Approved April 14, 2005
Filed April 18, 2005

⁴⁶ Section 4-28-07 was also amended by section 2 of House Bill No. 1518, chapter 70.

CHAPTER 71

SENATE BILL NO. 2114

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

DAIRY REGULATION AND FEES

AN ACT to amend and reenact subsection 9 of section 4-30-01 and sections 4-30-02, 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy regulations, reinspection fees, and references to current food and drug administration regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Distributor" means a person ~~who purchases milk or milk products and transports them to a retail dealer or a consumer or company that provides storage, transportation, delivery, or distribution of milk and milk products to any person who offers for sale or sells to any consumer milk or milk products.~~

SECTION 2. AMENDMENT. Section 4-30-02 of the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk from a dairy producer. A reinspection fee of seventy-five dollars per inspection must be paid by each dairy farm facility for which the commissioner has conducted a reinspection resulting from suspension of a farm permit, degrade of a farm facility from grade A to manufacturing grade, or unsanitary conditions that must be corrected within a specified period of time.

SECTION 3. AMENDMENT. Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that described in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 4. AMENDMENT. Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

SECTION 5. AMENDMENT. Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, 2004 2003 Revision, Public Health Service, Food and Drug Administration, ~~Publication No. 229~~ including "Grade 'A' Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1" and all supplements added thereto ~~except that the minimum requirements for solids-not-fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO"~~ and all supplements added thereto. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 6. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance

officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2004~~ 2003 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 7. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - 1995 Edition".

SECTION 8. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance, ~~2004~~ 2003 Revision, Public Health Service, Food and Drug Administration; ~~Publication No. 229~~" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2004~~ 2003 Revision".

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 72

SENATE BILL NO. 2355

(Senators Klein, Taylor)

(Representative Kreidt)

PESTICIDE APPLICATOR SERVICE OF PROCESS

AN ACT to amend and reenact section 4-35-11 of the North Dakota Century Code, relating to designation of the agent for service of process for a nonresident pesticide applicator or dealer; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-11 of the North Dakota Century Code is amended and reenacted as follows:

4-35-11. Nonresident application - Designation of agent for service of process. Any nonresident applying for certification as an applicator or dealer under this chapter to operate in this state shall file a written power of attorney designating the ~~secretary of state~~ North Dakota state university extension service or its designee as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of this state over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the ~~secretary of state~~ extension service as such agent. The ~~secretary of state~~ extension service is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the ~~secretary of state~~ extension service or of a resident agent. The copy will be duly certified by the ~~secretary of state~~ extension service.

SECTION 2. APPLICATION. Any document filed before the effective date of this Act designating the secretary of state as agent for service of process, including any written powers of attorney, must be transferred to the extension service on the effective date of this Act.

Approved March 21, 2005

Filed March 21, 2005

ALCOHOLIC BEVERAGES

CHAPTER 73

HOUSE BILL NO. 1159

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

ALCOHOL LICENSING, AUDITS, AND REGISTRATION

AN ACT to create and enact a new section to chapter 5-03 of the North Dakota Century Code, relating to alcoholic beverage supplier licensing requirements; to amend and reenact sections 5-01-01, 5-01-11, and 5-03-06 of the North Dakota Century Code, relating to definitions, goods and services provided by alcohol wholesalers to retailers, and the authority of the tax commissioner to audit records of alcoholic beverage entities; to repeal section 5-03-01.2 of the North Dakota Century Code, relating to brand registration of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁷ **SECTION 1. AMENDMENT.** Section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.

⁴⁷ Section 5-01-01 was also amended by section 1 of House Bill No. 1383, chapter 74.

7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
13. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
- ~~43.~~ 14. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

SECTION 2. AMENDMENT. Section 5-01-11 of the North Dakota Century Code is amended and reenacted as follows:

5-01-11. Unfair competition - Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state tax commissioner may determine by rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense to the wholesaler associated with the furnishing of containers, equipment, and tap or coil cleaning service does not exceed one hundred fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed ~~one~~ four hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation

include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to ~~two hundred fifty~~ five hundred dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. ~~The state tax commissioner may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.~~

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

SECTION 3. AMENDMENT. Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

5-03-06. Examination by tax commissioner - Penalty for improper returns. The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, microbrew pub, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any wholesaler, domestic winery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of the total amount of the tax unpaid from the due date of payment until paid delay, except the first month after the return or tax became due. Any wholesaler, domestic winery, or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any wholesaler, domestic winery, or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler, domestic winery, or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any wholesaler, domestic winery, or microbrew pub may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

SECTION 4. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Supplier license required - Filing requirements - Penalty.

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the tax commissioner no later than the thirtieth day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the thirtieth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.

SECTION 5. REPEAL. Section 5-03-01.2 of the North Dakota Century Code is repealed.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 74

HOUSE BILL NO. 1383

(Representatives Berg, Boucher, Iverson)
(Senators Hacker, Heitkamp, Stenehjem)

ALCOHOLIC BEVERAGE SALE AND CONSUMPTION

AN ACT to create and enact a new subsection to section 5-01-01 of the North Dakota Century Code, relating to definitions for the purpose of sale and consumption of alcoholic beverages; and to amend and reenact sections 5-02-05 and 5-02-09 of the North Dakota Century Code, relating to the sale and consumption of alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁸ **SECTION 1.** A new subsection to section 5-01-01 of the North Dakota Century Code is created and enacted as follows:

"Twenty-one years of age" means it is after three a.m. on the date twenty-one years after a person's date of birth.

⁴⁹ **SECTION 2. AMENDMENT.** Section 5-02-05 of the North Dakota Century Code is amended and reenacted as follows:

5-02-05. Dispensing prohibited on certain days - Penalty. Any person who dispenses or permits the consumption of alcoholic beverages on licensed premises ~~after one~~ between two a.m. ~~on Sundays, before and~~ and twelve noon on Sundays, ~~or between the hours of one~~ two a.m. and eight a.m. on all other days of the week, or ~~who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises~~ on Christmas Day, after ~~one~~ two a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

SECTION 3. 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~~ 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, 2005
Filed March 25, 2005

⁴⁸ Section 5-01-01 was also amended by section 1 of House Bill No. 1159, chapter 73.

⁴⁹ Section 5-02-05 was also amended by section 1 of Senate Bill No. 2234, chapter 79.

CHAPTER 75

HOUSE BILL NO. 1413

(Representatives Wrangham, Headland, S. Kelsh, Norland)
(Senator Traynor)

ALCOHOL ESTABLISHMENT CONSTRUCTION WORK

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to an underage person in a licensed alcohol establishment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁰ **SECTION 1. AMENDMENT.** Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction.

1. Except as permitted in this section and section 5-02-06, a person under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any person for the purchase of an alcoholic beverage; ~~or~~.
2. A person under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except a:
 - a. A restaurant ~~when~~ if accompanied by a parent or legal guardian; ~~or~~ in;
 - b. In accordance with section 5-02-06; ~~or if~~;
 - c. If the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - d. If the person is a law enforcement officer or other public official who enters the premises in the performance of official duty; ~~or if~~
 - e. If the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or

⁵⁰ Section 5-01-08 was also amended by section 1 of Senate Bill No. 2067, chapter 76.

more years of age with prior notification of the local licensing authority.

3. A violation of this section is a class B misdemeanor.
4. The court ~~may~~, under this section, ~~may~~ refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.

⁵¹ **SECTION 2. AMENDMENT.** Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions ~~as to~~ for persons under twenty-one years of age - Penalty - Exceptions.

1. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. ~~Any~~
2. A person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
3. A person under twenty-one years of age may enter and remain on the licensed premises if the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the person is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the person enters the licensed premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.
4. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.

⁵¹ Section 5-02-06 was also amended by section 2 of Senate Bill No. 2067, chapter 76.

5. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by ~~the~~ a restaurant as provided in subsection 2 to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages.
6. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 76

SENATE BILL NO. 2067

(Senators Heitkamp, Nething, Espegard, J. Lee)
(Representatives Gulleson, R. Kelsch)

ALCOHOL USE BY PERSON UNDER TWENTY-ONE

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to the use of alcohol by a person under twenty-one years of age; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵² **SECTION 1. AMENDMENT.** Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing using alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction.

1. Except as permitted in this section and section 5-02-06, a person under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any person for the purchase of an alcoholic beverage; ~~or~~.
2. A person under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except a:
 - a. A restaurant ~~when~~ if accompanied by a parent or legal guardian; ~~or~~ in;
 - b. In accordance with section 5-02-06; ~~or~~ if;
 - c. If the person is a law enforcement officer or other public official who enters the premises in the performance of official duty; or ~~if~~
 - d. If the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor.

⁵² Section 5-01-08 was also amended by section 1 of House Bill No. 1413, chapter 75.

4. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. For purposes of this section, a person is not twenty-one years of age until eight a.m. on that person's twenty-first birthday.

⁵³ **SECTION 2. AMENDMENT.** Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty - Exceptions.

1. Except as permitted in this section, ~~any~~ a licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits ~~such~~ a person under twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. ~~Any~~ A person under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
3. A person may enter and remain on the licensed premises if the person is a law enforcement officer or other public official who enters the premises in the performance of official duty or if the person enters the licensed premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority. ~~Any~~
4. A person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1. ~~Any~~
5. A person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant as provided in subsection 2 to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic

⁵³ Section 5-02-06 was also amended by section 2 of House Bill No. 1413, chapter 75.

beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

6. For purposes of this section, a person is not twenty-one years of age until eight a.m. on that person's twenty-first birthday.

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

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 77

HOUSE BILL NO. 1325

(Representatives Ruby, Kasper, L. Meier)
(Senators O'Connell, Tollefson)

INTERSTATE WINE SALES

AN ACT to amend and reenact section 5-01-16 of the North Dakota Century Code, relating to interstate sales of wine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller to consumer - Penalty.

1. ~~No~~ A person in the business of selling alcoholic beverages may not knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. ~~No~~ A person in the business of transporting goods may not knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state tax commissioner on all

alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state tax commissioner showing for each shipment, the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, firearms and explosives of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

6. In the alternative to subsection 5 and as a means for allowing reciprocal privilege, this section does not apply to and there are not due any state tax, fees, or other charges for a resident of this state who is at least twenty-one years of age who imports or transports into this state from another state wine for personal use if the state from which the wine is sent allows a resident of that state to receive wine from this state without imposition of state tax, fees, or other charges. A person who receives wine under this subsection may not resell the wine. For tax purposes, receipt of a shipment into this state under this subsection is not a sale in this state. A licensed winery, wholesaler, or retailer in this state may ship wine for personal use and not for resale directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state tax, fees, or other charges. For tax purposes, the shipment to another state under this subsection is a sale in this state. The shipping container of any wine sent into or out of this state under this subsection must be labeled to indicate clearly that the container contains alcoholic beverages and may not be delivered to an individual who is under twenty-one years of age. A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month. Sales by a winery may include interstate sales and interstate sales through the internet. Annual shipping sales under this section made by a winery in this state are in addition to on-premise tasting room volume totals and are not part of the winery's annual on-premise total limitations.

CHAPTER 78

SENATE BILL NO. 2179

(Senators Espegard, J. Lee)
(Representative Potter)

DOMESTIC WINERY WINE SALES

AN ACT to amend and reenact section 5-01-17 of the North Dakota Century Code, relating to domestic winery wine sales and special events; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

5-01-17. Domestic winery license.

1. The state tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. ~~A majority of the~~ The percentage of ingredients by volume, excluding water, of wine produced by a domestic winery; ~~which~~ must be grown and produced in this state ~~must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty-one percent in the sixth and subsequent years of licensure.~~ Domestic wineries may be granted an exemption from the ~~majority~~ ingredient utilization requirement whenever the state tax commissioner determines, upon the commissioner's own motion or at the request of a domestic winery, that weather conditions, pest infestations, plant disease epidemics, or other natural causes have reduced the quantity or quality of produce grown in this state to an extent that renders compliance with the ~~majority~~ ingredient utilization requirement infeasible. The exemption is effective for one year unless the state tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of on-premises fortification. A domestic winery license may be issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license fees required by this title.
2. ~~Before a domestic winery sells any wine, the licensee must register with the state tax commissioner, without a fee, the labels for each type or brand of wine produced.~~ A domestic winery may sell, on the winery premises, wine produced by that winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of ~~ten~~ twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on-sale and off-sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than ~~five~~ twenty days per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine

and to sell its wine by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the state tax commissioner. The domestic winery may sell its wine to a liquor wholesaler licensed in this state and may sell or deliver its wine to persons outside the state pursuant to the laws of the place of the sale or delivery. A domestic winery may not engage in any wholesaling activities. All sales and delivery of wines to any other retail licensed premises in this state may be made only through a wholesale liquor license. A domestic winery may obtain a domestic winery license and a retailer license allowing the on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.

3. A domestic winery shall pay to the state the wholesaler taxes and the sales taxes on all wines sold at retail by the licensee as set forth in sections 5-03-07 and 57-39.2-03.2.
4. A domestic winery shall report quarterly or annually to the state tax commissioner the total quantity of wine sold by type and the amount of taxes due to the state in the manner and on the forms prescribed by the state tax commissioner.
5. Except as otherwise specified in this section, all provisions of this title govern the production, sale, possession, and consumption of wine produced by a domestic winery.

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

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 79

SENATE BILL NO. 2234

(Senators Kringstad, Hacker)
(Representatives S. Meyer, Weiler)

THANKSGIVING ALCOHOL SALES

AN ACT to amend and reenact section 5-02-05 of the North Dakota Century Code, relating to the dispensing of alcoholic beverages on certain days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁴ **SECTION 1. AMENDMENT.** Section 5-02-05 of the North Dakota Century Code is amended and reenacted as follows:

5-02-05. Dispensing prohibited on certain days - Penalty. ~~Any A person who dispenses may not dispense or permits permit the consumption of alcoholic beverages on a licensed premises after between one a.m. on Sundays, before and twelve noon on Sundays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve. In addition, a person may not provide off-sale after one a.m. on Thanksgiving Day. A person that violates this section is guilty of a class A misdemeanor.~~

Approved March 16, 2005

Filed March 17, 2005

⁵⁴ Section 5-02-05 was also amended by section 2 of House Bill No. 1383, chapter 74.

BANKS AND BANKING

CHAPTER 80

HOUSE BILL NO. 1168

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

DEPARTMENT OF FINANCIAL INSTITUTIONS RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 6-01-07.1 of the North Dakota Century Code, relating to confidentiality of department of financial institutions records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

6-01-07.1. Records - Confidential.

1. All facts and information obtained by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 7:
 - a. In the course of examining financial institutions, credit unions, and other licensed entities under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution's or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.
 - b. From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
 - c. In the course of investigating an institution under the supervision of, or licensed by, the commissioner, until such investigation is complete.
 - d. In the course of a special investigation being carried out at the request of the governor or any court.
 - e. In the form or nature of an application for a charter, license, or permission which meets any of the following criteria:
 - (1) Trade secrets and commercial or financial information.

- (2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (3) Information contained in the application form which is in the nature of examination report information.

Determination of what required application information falls within each category must be made by the body before which the application is brought.

2. When the commissioner is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under the commissioner's supervision, the commissioner shall divulge only such information specified in subsection 1 as is necessary and sufficient for the action taken or to be taken.
3. The commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
4. The commissioner may furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, insurance commissioner, office of the securities commissioner, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
5. The commissioner shall not be required to disclose the name of any debtor of any financial institution, credit union, or licensed entity reporting to or under the supervision of the commissioner or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided.
6. This section does not 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.
7. The standards for confidentiality and disclosure by the commissioner set forth in this section, except the standard of the exercise of discretion, which shall only be exercised by the commissioner, apply equally to the state banking board, the state credit union board, and all department employees.

CHAPTER 81

HOUSE BILL NO. 1140

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

FINANCIAL INSTITUTION TERMS

AN ACT to amend and reenact subsection 1 of section 6-02-01 and section 6-05-02 of the North Dakota Century Code, relating to use of terms for bank, annuity, safe deposit, surety, and trust company regulation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations, banks organized under the laws of another state, domestic or foreign bank holding companies, their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter.

SECTION 2. AMENDMENT. Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

6-05-02. Compliance with chapter required - Penalty for noncompliance.

No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, state banks or trust companies authorized to engage in trust activities under the laws of another state, their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written

matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner.

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 82

SENATE BILL NO. 2175

(Senators Krebsbach, J. Lee)
(Representatives Rennerfeldt, Ruby)

REAL ESTATE APPRAISALS FOR REAL ESTATE LOANS

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to real estate appraisal requirements for real estate loans by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of 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 of more than two hundred fifty thousand dollars is made, an appraisal must be conducted by a licensed or certified appraiser if required by the 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. A bank must obtain an appropriate evaluation of real property collateral for transactions that do not require an appraisal by a licensed or certified appraiser. The commissioner may require an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns.~~ 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 21, 2005

Filed March 21, 2005

CHAPTER 83

HOUSE BILL NO. 1164

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

BANK FACILITIES, INVESTMENTS, AND LOANS

AN ACT to amend and reenact sections 6-03-13.3, 6-03-38, and 6-03-59 of the North Dakota Century Code, relating to approval of banking facilities, investment by banks, and loan limitation to one borrower or concern.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a facility previously established to another location, it shall apply to the state banking board commissioner or the comptroller of the currency, as the case may be, for such authority and provide the board commissioner with such relevant information as the board commissioner may reasonably request. In determining whether or not to approve the application for such facility, the banking board commissioner shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

When considering an application for relocating an existing facility to another location within the same corporate city limits, the state banking board commissioner may consider only subsection 2 as a factor for approval.

Upon approval by the state banking board of a merger application under section 6-03-11, the former main office and facilities of the banking institutions being merged will become facilities of the surviving banking institution and the banking institution is not required to file an application under this section.

If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

If an interested party files a protest with respect to an application, the matter will be referred to and decided by the state banking board.

SECTION 2. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty.

No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and 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, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount ~~aggregating more than two~~ determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus, ~~nor~~. Further, no bank may invest its assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to. A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Section 6-03-59 of the North Dakota Century Code is amended and reenacted as follows:

6-03-59. Loan limitation to one borrower or concern. The total direct, indirect, or contingent liability of any borrower to any state banking association shall not exceed at any time twenty-five percent of the unimpaired capital and surplus of such association association's common stock, surplus, and undivided profits as of the most recent report of condition and income. For the purpose of this section the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The discount of bills of exchange drawn in good faith against actual existing values; loans secured by bills of lading drawn against produce in transit; and loans secured by bonded warehouse receipts or elevator storage tickets covering produce actually in storage shall not be considered as money borrowed if all paper relating to such transactions is made payable to, and such paper and the security therefor remains in the possession and control of the association until the advance or

debt is paid. An association may discount commercial or business paper actually owned by the person negotiating it without such discounting being deemed an addition to any loan made to the negotiator.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 84

SENATE BILL NO. 2124

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

FINANCIAL INSTITUTION LOANS

AN ACT to amend and reenact subsection 1 of section 6-05-08 of the North Dakota Century Code, relating to the powers of annuity, safe deposit, surety, and trust companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-05-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire, lease, purchase, own, hold, use, improve, mortgage, sell, and convey such real estate and personal property as may be necessary for the convenient transaction of its business. It may acquire real estate by foreclosure or upon compromise or settlement of prior mortgages held by it either as absolute owner or as trustee, and may dispose of the same. No part of the capital, deposits, trust funds, or property owned or held by it, in trust or otherwise, may be invested in real estate except as herein authorized, unless the investment is made under and by virtue of a particular contract, or instrument, or order, judgment, or decree of court, which confers a special power or authority so to do, and then only with, or to the extent of, the moneys or funds thereby provided and belonging to such particular trust. Such corporation is authorized ~~to loan money and~~ to purchase notes, bonds, mortgages, and other evidences of indebtedness, and other securities, subject to the limitations imposed upon banking associations as to investments, and to convert the same into cash and other securities.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 85

HOUSE BILL NO. 1340

(Representatives Dosch, Charging, Kasper)
(Senators Dever, Espegard)

SUBSIDIARY TRUST COMPANY LOCATIONS

AN ACT to amend and reenact section 6-05.1-04 of the North Dakota Century Code, relating to locations for multiple offices of a subsidiary trust company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

6-05.1-04. Trust offices of subsidiary trust companies. A subsidiary trust company may have a trust office at any one or more locations in this state in the same building in which the main office of any affiliated bank is located, but not elsewhere. However, that portion of the home office of a subsidiary trust company, which does not function as and is not held out as an on-premises direct customer contact center or business development office, may be located anywhere within the corporate city limits in which the main office of any affiliated bank is located establish and maintain for itself and its subsidiary entities one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States. The regulatory process by which a subsidiary trust company obtains authority to establish and maintain offices in addition to a main office must be the same as the process that applies to a trust company under chapter 6-05.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 86

HOUSE BILL NO. 1163

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

CREDIT UNIONS

AN ACT to create and enact a new subsection to section 6-01-17.1 of the North Dakota Century Code, relating to a fee for an application to merge by two or more credit unions; to amend and reenact subdivision g of subsection 1 of section 6-01-04.3, sections 6-06-05, 6-06-06.1, 6-06-08, 6-06-12, 6-06-13, 6-06-13.1, 6-06-14, 6-06-19, 6-06-20, 6-06-21, 6-06-26, and 6-08-15, and subsection 2 of section 6-08-16 of the North Dakota Century Code, relating to the use of the phrases credit union and corporate central credit union, the issuance of certificates of deposit, reports by credit unions, interest rate determinations, credit union board membership, credit union organization, credit union volunteers, credit union credit committee meetings, credit union loan and borrowing limitations, credit union committee loans, credit union reserve funds, credit union dividends, slander against financial institutions, and compliance with clearinghouse rules; and to repeal sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code, relating to credit union reserve funds and share scaledowns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

- g. Violations of loan limitations under subsection ~~7~~ 1 of section 6-06-12;

SECTION 2. A new subsection to section 6-01-17.1 of the North Dakota Century Code is created and enacted as follows:

Application by two or more credit unions to merge, a fee of three hundred dollars.

SECTION 3. AMENDMENT. Section 6-06-05 of the North Dakota Century Code is amended and reenacted as follows:

6-06-05. Use of credit union and corporate central credit union restricted - Forfeiture. It is unlawful for any person, association, copartnership, or corporation, domestic or foreign, except corporations organized in accordance with the provisions of this chapter, to use the words "credit union", "corporate central credit union", or "central credit union" in their name or title, and any person, association, copartnership, or corporation violating this section shall forfeit to the state one hundred dollars for every day, or part thereof, during which such violation continues. The commissioner may recover such forfeited sums in a civil action, and shall deposit any sums recovered or collected with the state treasurer. Only one "corporate central credit union" or "central credit union" may be organized under this chapter, and no other credit union may use the term "corporate central" or "central" as part of its name. The North Dakota credit union league, any chapter, affiliate, or subsidiary of this league, and any political action committee formed by credit unions

organized under this chapter or federal law or a political action committee formed by the North Dakota credit union league are specifically exempt from this restriction.

SECTION 4. AMENDMENT. Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-06.1. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except that the requirement for insurance of accounts for ~~the North Dakota~~ any "corporate central credit union" or "central credit union" may be waived under section 6-06-40, or as authorized under sections 6-03-02.2 and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 6-06-08 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08. State credit union board to supervise credit unions - Reports - Examinations - Fees.

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least ~~twice~~ four times each year. The commissioner shall prescribe the forms for 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~~ copy of the call report ~~submitted to the national credit union administration, or a printout retrieved from computer facilities in~~ e-mailed directly to the department of 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 it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union 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 penalty for reports filed late, not exceeding three business days beyond the due date required by this section.
2. Credit unions must be examined at least once each twenty-four months by the commissioner. 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 the commissioner's discretion conduct a joint examination with the national credit union administration.
3. If it is determined through an examination or otherwise that the credit union is violating the provisions of this chapter, or is insolvent, the state credit union board may serve notice on the credit union of its intention to revoke the charter. If such violations continue for a period of fifteen days after such notice, the board may revoke the charter and take possession of the business and property of such credit union, and shall maintain possession then until such time as it permits the reinstatement of the charter and the continuation of business by the credit union, or

until its affairs finally are liquidated. The board may take similar action if any required report remains in arrears for more than fifteen days.

4. Every state credit union, including ~~North Dakota central~~ any "corporate central" or "corporate" credit union, placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay a yearly assessment. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the penalty is delinquent. The examination fee for ~~North Dakota central~~ any "corporate central" or "corporate" credit union shall be charged by the department at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 6. AMENDMENT. Section 6-06-12 of the North Dakota Century Code is amended and reenacted as follows:

6-06-12. Directors - Duties and powers - Loan limitations.

1. The directors shall have general management of the credit union, and it is their duty particularly:
 - 4- a. To act on applications for membership, unless a membership officer is appointed.
 - 2- b. To determine interest rates on loans and deposits or designate a representative to determine these rates.
 - 3- c. To fix, subject to the approval of the commissioner, the amount of surety bond which must be required of all officers and employees handling money.
 - 4- d. To declare dividends.
 - 5- e. To transmit to the members recommendations for changes in the bylaws.
 - 6- f. To fill vacancies on the board of directors and on the credit committee who shall serve until their successors are chosen and qualified.
 - 7- g. To determine the maximum individual shareholdings and the maximum aggregate liability to the credit union of any one borrower but such maximum aggregate liability allowed by

the board may not exceed the amounts listed in the following schedule:

Total Assets	Loan Limit
0 to 70,000	10% with a limit of 5,000
70,001 to 100,000	6,000 limit
100,001 to 200,000	8,000 limit
200,001 to 300,000	10,000 limit
300,001 to 400,000	12,000 limit
400,001 to 500,000	14,000 limit
over 500,000	3% of assets

For purposes of this subsection, the aggregate liability of one borrower to a credit union includes the total direct, indirect, and contingent liabilities of the borrower, and the liabilities of separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The aggregate liability of any one borrower to the credit union does not include any loan or portion of a loan guaranteed by the government, to the extent of the guarantee, nor any loan secured by shares in the credit union, to the extent of the security.

In all cases a credit union is allowed to loan up to and including two hundred dollars to any individual regardless of the amount of total assets in said credit union. Provided, that the foregoing provisions do not apply to the North Dakota central credit union.

- ~~8.~~ h. To supervise and control investments other than loans to members.
- ~~9.~~ i. To establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion.
- ~~10.~~ 2. The board may appoint membership officers authorized to approve applications for membership under such conditions as the board may prescribe; except that such membership officers so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.
- 3. No immediate family member of the president, general manager, or chief executive officer of the credit union may serve on the board of directors of the credit union.
- 4. A majority of the board of directors of a credit union may not be immediate family members of each other.

SECTION 7. AMENDMENT. Section 6-06-13 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13. Officers - Elections - Duties. At their organization meeting and within thirty days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice chairman of the board or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the

same individual. The persons so elected are the executive officers of the corporation. The terms of the officers must be one year, or until their successors are chosen and have duly qualified. The duties of the officers must be prescribed in the bylaws. The board of directors may employ an officer in charge of operations whose title must be ~~either~~ president or chief executive officer, general manager, or ~~both~~ any combination thereof; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

SECTION 8. AMENDMENT. Section 6-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13.1. 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~~ five 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.

SECTION 9. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee has general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to ~~the North Dakota central~~ any "corporate central" or "corporate" credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is ~~two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed fifty thousand dollars~~ subject to limits approved in loan policy by the board of directors of the credit union. Security under this section includes an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans

up to the limit established by the credit committee, or in excess of the limit if the excess is fully secured by unpledged shares. An individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

SECTION 10. AMENDMENT. Section 6-06-19 of 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 the credit union's assets unless the commissioner authorizes a larger amount. The board 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 the corporate central credit union's capital, surplus, and reserve fund. For 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 membership capital base funds share deposits 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.

SECTION 11. AMENDMENT. Section 6-06-20 of the North Dakota Century Code is amended and reenacted as follows:

6-06-20. Borrowings of directors and committee members limited - Repayment of loans. A director or member of any committee may not borrow from the credit union in which the director or member holds office more than twenty one hundred 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.

SECTION 12. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund. Every credit union, including corporate central credit unions, shall maintain a reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon prior approval of the state credit union board an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union administration. If it is found through an examination that the allowance for loan and lease loss account is not sufficient in disclosing the exposure to loan losses, then the credit union will increase the allowance for loan and lease loss account within thirty days as directed by the commissioner.

SECTION 13. 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 union's board of directors, may declare and pay a dividend to be paid from the remaining on shares from current or accumulated net earnings, or both, in the absence of sufficient net earnings, as authorized by the board or commissioner. The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends to be paid. 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 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 board or commissioner but only after providing for required reserves, accrued and unpaid expenses, and established loan and lease losses. A credit union may pay a dividend on partial or full shares and may pay the dividend at differing levels and at differing intervals based on the type of share accounts owned by a member, the liquidation priority of share accounts, and the balances of a member's share accounts. A credit union may determine the rate and amount of a dividend before the end of the dividend period involved. 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. A credit union shall not pay a dividend if payment would result in the insolvency of the credit union.

SECTION 14. AMENDMENT. Section 6-08-15 of the North Dakota Century Code is amended and reenacted as follows:

6-08-15. Slander or libel of bank or credit union - Safe deposit, annuity, surety, or trust company - Aiding or abetting - Penalty - Liability for damages. Any person who willfully and maliciously makes, circulates, or transmits to another or to others, any false statement, rumor, or suggestion, written, printed, or by word of mouth, which directly or by inference is derogatory to the financial condition, or which affects the solvency or financial standing, of any state or national bank, of any state or federal credit union, or of any annuity, safe deposit, surety, or trust company authorized to do business in this state, or who counsels, aids, procures, or induces another to start, transmit, or circulate any such false statement or rumor, is guilty of a class A misdemeanor, and in addition thereto is liable in damages to such association, or corporation, or the receiver thereof, to be recovered in a civil action brought for that purpose.

SECTION 15. AMENDMENT. Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection

agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

SECTION 16. REPEAL. Sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code are repealed.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 87

SENATE BILL NO. 2263

(Senators Espgaard, Holmberg, Schobinger, Tollefson)
(Representatives Dietrich, Nottestad)

CREDIT UNION MEMBERSHIP

AN ACT to amend and reenact section 6-06-07 of the North Dakota Century Code, relating to the field of membership of state-chartered 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.

1. 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 of the credit union.
2. Credit union membership is limited to groups having a common bond of occupation or association or to groups residing within a well-defined rural or urban district geographic area that does not extend beyond a seventy-five mile [120.70 kilometer] radius of the home office of the credit union. Except as provided by this section, an office of a credit union that has a field of membership defined by geography may not be located more than seventy-five miles [120.70 kilometers] from the credit union main office. The restrictions on location and field of membership under this section do not apply to a credit union office location or field of membership approved by the board before January 1, 2005. In the event of a merger between credit unions with different geographic fields of membership, the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union. After December 31, 2004, a credit union may not establish and operate a new branch office that is outside the credit union's field of membership. A branch office may not expand the geographic field of membership of a credit union.
3. The board shall adopt a procedure whereby through which all interested persons, including banking institutions and credit unions, are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing; to obtain a hearing; and to intervene as a party to a proceeding concerning a proposed application for a credit union to expand its the credit union's field of membership.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 88

HOUSE BILL NO. 1150

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

BANK OF NORTH DAKOTA RECORD CONFIDENTIALITY

AN ACT to create and enact a new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code, relating to confidentiality of Bank of North Dakota customer records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1.** A new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

The program under which any financing or security referenced in subdivision a was made.

Approved March 4, 2005

Filed March 4, 2005

⁵⁵ Section 6-08.1-02 was also amended by section 1 of House Bill No. 1203, chapter 537.

CHAPTER 89

SENATE BILL NO. 2074

(Industry, Business and Labor Committee)
(At the request of the Municipal Bond Bank)

PUBLIC FINANCE AUTHORITY

AN ACT to create and enact three new sections to chapter 6-09.4 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and authorizing the authority to issue bonds on behalf of other state bonding entities; and to amend and reenact sections 6-09.4-01, 6-09.4-03, 6-09.4-04, 6-09.4-05, 6-09.4-05.1, 6-09.4-06, 6-09.4-07, 6-09.4-08, 6-09.4-09, 6-09.4-10, 6-09.4-11, 6-09.4-12, 6-09.4-14, 6-09.4-15, 6-09.4-16, 6-09.4-17, 6-09.4-18, 6-09.4-19, 6-09.4-20, 6-09.4-21, 6-09.4-22, 6-09.4-23, 21-02-11, and 21-03-30, subsection 7 of section 26.1-05-19, subdivision 1 of subsection 2 of section 28-32-01, subsection 9 of section 40-33.3-06, sections 54-01-27 and 54-17-36, subsection 1 of section 61-28.1-12, and subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code, relating to changing the name of the municipal bond bank to the public finance authority and to use of the reserve fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-01. Title. This chapter must be known as the "North Dakota ~~Municipal Bond Bank~~ Public Finance Authority Act".

⁵⁶ **SECTION 2. AMENDMENT.** Section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Bond bank" means the North Dakota municipal bond bank created by section 6-09.4-04.~~
2. "Bondholder" or "holder" or any similar term when used with reference to a bond of the ~~bond bank~~ public finance authority means any person who is the bearer of any outstanding bond of the ~~bond bank~~ public finance authority.
3. 2. "Bonds" or "bond" means evidences of indebtedness of the ~~bond bank~~ public finance authority issued pursuant to this chapter.

⁵⁶ Section 6-09.4-03 was also amended by section 2 of Senate Bill No. 2276, chapter 90.

- 4- 3. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the ~~bond bank~~ public finance authority or other purchasers of municipal securities.
- 5- 4. "Municipal security" means an evidence of indebtedness issued by a political subdivision, but does not include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as an "exempt facility bond" as defined under 26 U.S.C. 142(a) (4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
- a. A facility for the furnishing of water.
 - b. A wastewater facility.
 - c. A nonpoint source pollution control facility.
- 6- 5. "Political subdivision" means:
- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota, for purposes of the revolving loan fund program established by chapter 61-28.2.
 - d. The state water commission, for purposes of the revolving loan fund program established by chapter 61-28.1.
6. "Public finance authority" means the public finance authority created by section 6-09.4-04.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the ~~North Dakota municipal bond bank~~ public finance authority reserve fund or funds created as provided in section 6-09.4-10.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal or of interest on municipal securities, investment income, revenues, appropriations, and all other income derived or to be derived by the ~~bond bank~~ public finance authority under this chapter.

SECTION 3. AMENDMENT. Section 6-09.4-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-04. Creation of bond bank public finance authority. A bond bank public finance authority is hereby established under the operation, management, and control of the industrial commission to be known as the "North Dakota municipal bond bank public finance authority". The bond bank public finance authority is constituted as an instrumentality of the state exercising public and governmental functions, and the exercise by the bond bank public finance authority of the powers conferred by this chapter must be deemed and held to be an essential governmental function of the state.

SECTION 4. AMENDMENT. Section 6-09.4-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05. Participation voluntary - Agreement to participate. Participation by a political subdivision is entirely voluntary and no political subdivision may be required to sell its bond issues to the bond bank public finance authority. Notwithstanding any other state law applicable to the issuance of bonds, a political subdivision desiring to participate in the bond bank public finance authority may enter into an agreement with the bond bank public finance authority for the purchase by the bond bank public finance authority of a bond issue or issues of the political subdivision, including the purchase by the bond bank public finance authority of an issue or issues of refunding bonds, which refunding bonds may be required by the agreement to be issued at a rate or rates of interest higher or lower than that of the bond issue or issues to be refunded.

SECTION 5. AMENDMENT. Section 6-09.4-05.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-05.1. Administrative agreements with state agencies. The bond bank public finance authority and any state agency authorized by state or federal law to make an allocation of bonds or bonding authority or to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions may enter into an administrative agreement, which may authorize the bond bank public finance authority to administer the loan or bond program for the state agency. The agreement may delegate to the bond bank public finance authority the authority to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions.

⁵⁷ **SECTION 6. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank public finance authority may lend money to political subdivisions through the purchase and holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase by the bond bank public finance authority under this chapter and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank public finance authority may lend money to political subdivisions, through the purchase and holding

⁵⁷ Section 6-09.4-06 was also amended by section 3 of Senate Bill No. 2276, chapter 90.

of securities issued by the political subdivisions without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the ~~bond bank~~ public finance authority to purchase and hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the ~~bond bank~~ public finance authority, the authorizing resolution must state reasons for the ~~bond bank's~~ public finance authority's involvement in the bond issue. The ~~bond bank~~ public finance authority may hold such municipal securities for any length of time it finds to be necessary. The ~~bond bank~~ public finance authority, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the ~~bond bank~~ public finance authority which are authorized or pledged for payment of ~~bond bank~~ public finance authority obligations, and to otherwise assist political subdivisions as provided in this chapter.

The ~~bond bank~~ public finance authority may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the ~~bond bank~~ public finance authority issued under this chapter are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the ~~bond bank~~ public finance authority is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the ~~bond bank's~~ public finance authority's obligations are obligations of the ~~bond bank~~ public finance authority.

All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the ~~bond bank~~ public finance authority to incur any indebtedness or liability on behalf of or payable by the state.

⁵⁸ **SECTION 7. AMENDMENT.** Section 6-09.4-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-07. Powers. The ~~bond bank~~ public finance authority has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws, rules, and regulations for the conduct of its affairs and business and for use of its services.

⁵⁸ Section 6-09.4-07 was also amended by section 4 of Senate Bill No. 2276, chapter 90.

3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law, this chapter, or legislative appropriations.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds.
6. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
7. To do and perform any acts and things authorized by this chapter under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation.
8. To make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the ~~bond bank~~ public finance authority or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter.
9. To purchase or hold municipal securities of political subdivisions at such prices and in such manner as the ~~bond bank~~ public finance authority shall deem advisable, and to sell municipal securities acquired or held by it at such prices without relation to cost and in such manner as the ~~bond bank~~ public finance authority deems advisable.
10. To invest any funds or moneys of the ~~bond bank~~ public finance authority not then required for loan to political subdivisions and for the purchase of municipal securities in the same manner as permitted for investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of a political subdivision for the purpose of any loan or the purchase of its municipal securities, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with political subdivisions with respect to any such loan or purchase.
12. To consider the need, desirability, or eligibility of such loan, the ability of such political subdivision to secure borrowed money from other sources and the costs thereof, and the particular public improvement or purpose to be financed by the municipal securities to be purchased by the ~~bond bank~~ public finance authority.
13. To impose and collect charges from a political subdivision for its costs and services in review or consideration of any proposed loan to a political subdivision or purchase of municipal securities of such political subdivision, and to impose and collect charges therefor whether or not such loan has been made or such municipal securities have been purchased.

14. To fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the ~~bond bank~~ public finance authority, including dates and maturities of such bonds, provisions as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable, or advisable in the judgment of the ~~bond bank~~ public finance authority.
15. To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable to pay the premiums on such insurance.
16. To the extent permitted under its contracts with the holders of bonds of the ~~bond bank~~ public finance authority, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the ~~bond bank~~ public finance authority is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.
18. To do and perform any act and thing authorized by section 54-01-27 or 54-17-36 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

SECTION 8. AMENDMENT. Section 6-09.4-08 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-08. Bonds of the ~~bond bank~~ public finance authority. Bonds of the ~~bond bank~~ public finance authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds of the ~~bond bank~~ public finance authority, issued to provide funds to a municipal pipeline authority, are to mature not more than thirty years from the date of issue. Bonds of the ~~bond bank~~ public finance authority may be sold at public or private sale at such time or times and at such price or prices as the ~~bond bank~~ public finance authority determines.

⁵⁹ **SECTION 9. AMENDMENT.** Section 6-09.4-09 of the North Dakota Century Code is amended and reenacted as follows:

⁵⁹ Section 6-09.4-09 was also amended by section 5 of Senate Bill No. 2276, chapter 90.

6-09.4-09. Pledges. Any pledge of revenue made by the industrial commission as security for ~~bond bank~~ public finance authority bonds is valid and binding from time to time when the pledge is made. The industrial commission may also pledge assets of the Bank of North Dakota as security for ~~bond bank~~ public finance authority bonds. The revenues or other moneys so pledged and thereafter received by the ~~bond bank~~ public finance authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the ~~bond bank~~ public finance authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the ~~bond bank~~ public finance authority.

SECTION 10. AMENDMENT. Section 6-09.4-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10. Reserve fund.

1. The ~~bond bank~~ public finance authority shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the ~~bond bank~~ public finance authority and its bondholders or any resolution of the ~~bond bank~~ public finance authority with respect to the proceeds of bonds, any other moneys or funds of the ~~bond bank~~ public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the ~~bond bank~~ public finance authority for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the ~~bond bank~~ public finance authority only for the purposes of 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 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~~ public finance authority 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~~ public finance authority are not then available in accordance with the terms of the contract. The required debt service reserve 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~~ public finance authority 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 contracts to sinking funds established for the payment or redemption of the bonds.
2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would

necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the ~~bond bank~~ public finance authority no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.

3. No bonds may be issued by the ~~bond bank~~ public finance authority unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued. Nothing in this chapter prevents or precludes the ~~bond bank~~ public finance authority from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The ~~bond bank~~ public finance authority may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the ~~bond bank~~ public finance authority with respect to such fund.
4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the ~~bond bank~~ public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.
5. If the maturity of a series of bonds of the ~~bond bank~~ public finance authority is three years or less from the date of issuance of the bonds, the ~~bond bank~~ public finance authority may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued ~~bond bank~~ public finance authority bonds, and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the ~~bond bank~~ public finance authority.

The industrial commission may determine that this section is inapplicable in whole or in part for bonds issued under section 23 of this Act.

SECTION 11. AMENDMENT. Section 6-09.4-11 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-11. Additional reserves and funds. The ~~bond bank~~ public finance authority may establish such additional and further reserves or such other funds or accounts as may be, in its discretion, necessary, desirable, or convenient to further the accomplishment of the purposes of the ~~bond bank~~ public finance authority to comply with the provisions of any agreement made by or any resolution of the ~~bond bank~~ public finance authority.

SECTION 12. AMENDMENT. Section 6-09.4-12 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-12. Participation by ~~bond bank~~ public finance authority in bonds held by ~~bank~~ Bank of North Dakota. The ~~bond bank~~ public finance authority may issue its bonds from time to time in an amount sufficient to purchase municipal securities held by the Bank of North Dakota at a price established by mutual agreement between the ~~bond bank~~ public finance authority and the Bank of North Dakota.

SECTION 13. AMENDMENT. Section 6-09.4-14 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-14. Purchase of bonds of ~~bond bank~~ public finance authority. The ~~bond bank~~ public finance authority has the power to purchase bonds of the ~~bond bank~~ public finance authority out of any funds or money of the ~~bond bank~~ public finance authority available therefor. The ~~bond bank~~ public finance authority may hold, cancel, or resell such bonds or notes subject to and in accordance with agreements with holders of its bonds.

SECTION 14. AMENDMENT. Section 6-09.4-15 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-15. Bonds as legal investments and security. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the ~~bond bank~~ public finance authority pursuant to this chapter, and the bonds are authorized security for any and all public deposits.

SECTION 15. AMENDMENT. Section 6-09.4-16 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-16. Tax exemptions. All property of the ~~bond bank~~ public finance authority and all bonds issued under this chapter must be deemed to be serving essential public and governmental purposes and such property and such bonds so issued, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be exempt from state, county, and municipal taxes of any and all kinds.

SECTION 16. AMENDMENT. Section 6-09.4-17 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-17. Exemption of property from execution sale. All property of the ~~bond bank~~ public finance authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the same nor may any judgment against the ~~bond bank~~ public finance authority be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the ~~bond bank~~ public finance authority on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the ~~bond bank~~ public finance authority under this chapter or to

obtain any relief upon the ground that such resolution is invalid must be commenced within ten days after the adoption of said resolution by the industrial commission. After the expiration of such period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

SECTION 17. AMENDMENT. Section 6-09.4-18 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-18. Insurance or guaranty. The ~~bond bank~~ public finance authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds issued by the ~~bond bank~~ public finance authority, or on any municipal securities purchased or held by the ~~bond bank~~ public finance authority, pursuant to this chapter; and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the ~~bond bank~~ public finance authority to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 18. AMENDMENT. Section 6-09.4-19 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-19. Remedies on default of municipal securities. In the event of default by a political subdivision in the payment of interest on or principal of any municipal securities owned or held by the ~~bond bank~~ public finance authority, the ~~bond bank~~ public finance authority may proceed to enforce payment, pursuant to applicable provisions of law, of such interest or principal or other amount then due and payable.

SECTION 19. AMENDMENT. Section 6-09.4-20 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-20. Form of municipal securities and investments. All municipal securities held by the ~~bond bank~~ public finance authority as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the ~~bond bank~~ public finance authority. All municipal securities at any time purchased, held, or owned by the ~~bond bank~~ public finance authority must, upon delivery to the ~~bond bank~~ public finance authority, be in fully marketable form and accompanied by such documentation as shall from time to time be required by the ~~bond bank~~ public finance authority.

SECTION 20. AMENDMENT. Section 6-09.4-21 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-21. Presumption of validity. After issuance, all bonds of the ~~bond bank~~ public finance authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the ~~bond bank~~ public finance authority.

SECTION 21. AMENDMENT. Section 6-09.4-22 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-22. 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~~ public finance authority 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~~ public finance authority 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~~ public finance authority 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~~ public finance authority issued to fund the loan.

SECTION 22. AMENDMENT. Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.

1. If the ~~municipal bond bank~~ public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the ~~bond bank~~ public finance authority or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the ~~bond bank~~ public finance authority or the paying agent, or until the ~~bond bank~~ public finance authority or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the ~~bond bank~~ public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.

2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the municipal bond bank public finance authority or the paying agent. The bond bank public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the bond bank public finance authority or the paying agent.
3. If funds are withheld from a school district and made available to the bond bank public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the bond bank public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the bond bank public finance authority or a paying agent under this section.
4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the municipal bond bank public finance authority and the state board of public school education for the benefit of the bond bank public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the bond bank public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the bond bank public finance authority and the state board of public school education, those funds must be transferred to the bond bank public finance authority upon certification by the bond bank public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the bond bank public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.

SECTION 23. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority - Issuance on behalf of other state agencies.

The public finance authority may issue bonds or other evidences of indebtedness on behalf of other state agencies, instrumentalities, or officers, including the farm finance agency, industrial commission, North Dakota building authority, student loan trust, and any other state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness and which elects to enter into an administrative agreement with the public finance authority under this chapter. The public finance authority may be assisted by any other official appointed by the industrial commission to aid the executive director or to serve as an authorized officer of the public finance authority from time to time. Notwithstanding any other provision of law, in issuing bonds or other evidences of indebtedness and in administering or managing any bond issue postissuance on behalf of any other state agency, instrumentality, or officer, the public finance authority may exercise any of the powers and authority of that state agency, instrumentality, or officer which the

industrial commission determines to be necessary or expedient in the issuance of bonds or other evidences of indebtedness or in the administration or management of the issue. Any bonds or other evidences of indebtedness issued by the public finance authority on behalf of any other state agency, instrumentality, or officer, if so determined by the industrial commission, continues to be the obligation or liability of the state agency or instrumentality as otherwise provided by law and not an obligation or liability of the public finance authority.

SECTION 24. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Administrative agreements with state agencies and instrumentalities to issue bonds and other evidences of indebtedness. The public finance authority and any state agency, instrumentality, or officer authorized by law to issue bonds or other evidences of indebtedness to obtain funds for any authorized purpose may enter into an administrative agreement. The agreement may delegate to the public finance authority the power and authority to issue bonds or other evidences of indebtedness on behalf of the state agency, instrumentality, or officer to obtain funds for any other purpose authorized by law and may contain such other necessary or expedient terms and conditions as the industrial commission and the parties to the administrative agreement approve to effect the issuance of the bonds or other evidences of indebtedness and to aid in the administration or management of any bond issue after issuance.

SECTION 25. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Public finance authority as continuation of and successor in interest to municipal bond bank.

1. Beginning with the effective date of this Act, the public finance authority is deemed the continuation of and successor in interest to the municipal bond bank and any reference to the municipal bond bank or bond bank in any agreement, certificate, contract, covenant, indenture, resolution, recital, undertaking, bond, note, other evidence of indebtedness, or in any other document or instrument means the public finance authority.
2. The public finance authority as the continuation of and successor in interest to the municipal bond bank is deemed to:
 - a. Possess all rights, title, privileges, powers, immunities, property, assets, and claims of the bond bank; and
 - b. Fulfill and perform all obligations of the bond bank, including all bond bank obligations relating to outstanding bonds and notes.

SECTION 26. 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 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~~ public finance authority, 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 27. AMENDMENT. Section 21-03-30 of the North Dakota Century Code is amended and reenacted as follows:

21-03-30. Municipal bonds - Private sale to United States or state agencies. The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds is not required in the case of bonds issued under the authorization of subdivision b or c of subsection 7 of section 21-03-06, or in case bonds are sold to:

1. The state board of university and school lands.
2. The Bank of North Dakota.
3. The ~~North Dakota municipal bond bank~~ public finance authority.
4. Trust funds administered by public officials.
5. The United States of America, or any agency or instrumentality thereof.

SECTION 28. AMENDMENT. Subsection 7 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

7. Bonds issued by the ~~North Dakota municipal bond bank~~ public finance authority pursuant to chapter 6-09.4.

⁶⁰ **SECTION 29. AMENDMENT.** Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, ~~North Dakota municipal bond bank~~ public finance authority, North Dakota mill and elevator association, and North Dakota farm finance agency.

SECTION 30. AMENDMENT. Subsection 9 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

9. May mortgage, pledge, and grant a security interest in any or all of its property or revenues to secure the repayment of moneys loaned to it or advanced to it by the ~~municipal bond bank~~ public finance authority as the result of a bond issue under chapter 6-09.4.

⁶⁰ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 13 of House Bill No. 1088, chapter 195, and section 6 of Senate Bill No. 2027, chapter 538.

SECTION 31. AMENDMENT. Section 54-01-27 of the North Dakota Century Code is amended and reenacted as follows:

54-01-27. Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The ~~bond bank~~ public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 32. AMENDMENT. Section 54-17-36 of the North Dakota Century Code is amended and reenacted as follows:

54-17-36. Lease of municipal waterworks and sewage systems. Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such

agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the ~~bond bank~~ public finance authority or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 33. AMENDMENT. Subsection 1 of section 61-28.1-12 of the North Dakota Century Code is amended and reenacted 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~~ public finance authority 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.

SECTION 34. AMENDMENT. Subsections 2 and 3 of section 61-28.2-01 of the North Dakota Century Code are amended and reenacted as follows:

- 2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the state department of health. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the ~~North Dakota municipal bond bank~~ public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

3. The department shall administer the revolving loan fund. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the ~~North Dakota municipal bond bank~~ public finance authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The department shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 90

SENATE BILL NO. 2276

(Senators Esegard, Grindberg)
(Representative Dosch)

BOND BANK BOND ISSUANCE

AN ACT to amend and reenact section 6-09.4-02, subsection 5 of section 6-09.4-03, sections 6-09.4-06, 6-09.4-07, 6-09.4-09, and 6-09.4-13, and subsection 1 of section 40-57-02 of the North Dakota Century Code, relating to the purchase of qualified small issue bonds by the municipal bond bank and issuance of municipal industrial development revenue bonds by the municipal bond bank; and to provide program limits for the purchase or issuance of qualified small issue bonds or municipal industrial revenue bonds by the municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-02. Legislative policy. It is declared to be the policy of the state of North Dakota to foster and promote the provision of adequate capital markets and facilities for borrowing money by political subdivisions or other contracting parties and for the financing of their respective public improvements or projects as those terms are used or defined in this chapter or chapter 40-57. It is in the public interest to encourage political subdivisions or other contracting parties to continue their independent undertakings of public improvements or projects and the financing thereof by making funds available at reduced interest costs, especially during periods of restricted credit or money supply. Current credit and municipal bond market conditions require the exercise of the powers of the state to further and implement such policies by authorizing a state instrumentality to be created to borrow money and to issue its bonds to make funds available at reduced rates and on favorable terms for borrowing by political subdivisions or other contracting parties through the purchase or holding of marketable municipal securities of political subdivisions or other contracting parties in fully marketable form or in another form adequate to secure bonds issued by the state instrumentality and by granting broad powers to accomplish and to carry out the policies of the state.

⁶¹ **SECTION 2. AMENDMENT.** Subsection 5 of section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Municipal security" means an evidence of indebtedness issued by a political subdivision and a revenue agreement entered into by a contracting party as those terms are used in chapter 40-57, but does not generally include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as

⁶¹ Section 6-09.4-03 was also amended by section 2 of Senate Bill No. 2074, chapter 89.

a qualified small issue bond as defined under 26 U.S.C. 144(a) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, or as an "exempt facility bond" as defined under 26 U.S.C. 142(a) (4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:

- a. A facility for the furnishing of water.
- b. A wastewater facility.
- c. A ~~nonpoint source pollution control~~ solid waste disposal facility.

⁶² **SECTION 3. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank may lend money to political subdivisions or other contracting parties through the purchase ~~and or~~ holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the bond bank under this chapter or chapter 40-57 and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions or other contracting parties, through the purchase ~~and or~~ holding of securities issued by the political subdivisions or other contracting parties without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase ~~and or~~ hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision or other contracting party concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.

The bond bank may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the bond bank issued under this chapter or chapter 40-57 are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond

⁶² Section 6-09.4-06 was also amended by section 6 of Senate Bill No. 2074, chapter 89.

bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are payable solely from revenues or funds provided or to be provided under this chapter or chapter 40-57 and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

⁶³ **SECTION 4. AMENDMENT.** Section 6-09.4-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-07. Powers. The bond bank has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws, rules, and regulations for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law, this chapter or chapter 40-57, or legislative appropriations.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure the payment thereof and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds.
6. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
7. To do and perform any acts and things authorized by this chapter or chapter 40-57 under, through, or by means of its officers, agents, or employees or by contracts with any person, firm, or corporation.
8. To make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the bond bank or pertaining to any loan to a political subdivision or other contracting party or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter or chapter 40-57.
9. To purchase or hold municipal securities of political subdivisions or other contracting parties at such prices and in such manner as the bond bank shall deem advisable, and to sell municipal securities acquired or

⁶³ Section 6-09.4-07 was also amended by section 7 of Senate Bill No. 2074, chapter 89.

held by it at such prices without relation to cost and in such manner as the bond bank deems advisable.

10. To invest any funds or moneys of the bond bank not then required for loan to political subdivisions or other contracting parties and for the purchase of municipal securities in the same manner as permitted for investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of a political subdivision or other contracting party for the purpose of any loan or the purchase of its municipal securities, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with political subdivisions or other contracting parties with respect to any such loan or purchase.
12. To consider the need, desirability, or eligibility of such loan, the ability of such political subdivision or other contracting party to secure borrowed money from other sources and the costs thereof, and the particular public improvement, project, or purpose to be financed by the municipal securities to be purchased by the bond bank.
13. To impose and collect charges from a political subdivision or other contracting party for its costs and services in review or consideration of any proposed loan to a political subdivision or other contracting party or purchase of municipal securities of such political subdivision or other contracting party, and to impose and collect charges therefor whether or not such loan has been made or such municipal securities have been purchased.
14. To fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the bond bank, including dates and maturities of such bonds, provisions as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable, or advisable in the judgment of the bond bank.
15. To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable to pay the premiums on such insurance.
16. To the extent permitted under its contracts with the holders of bonds of the bond bank, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the bond bank is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter or chapter 40-57.
18. To do and perform any act and thing authorized by section 54-01-27 or 54-17-36 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

⁶⁴ **SECTION 5. AMENDMENT.** Section 6-09.4-09 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-09. Pledges. Any pledge of revenue or of a revenue agreement under chapter 40-57 made by the industrial commission as security for bond bank bonds is valid and binding from time to time when the pledge is made. The industrial commission may also pledge assets of the Bank of North Dakota as security for bond bank bonds. The revenues or other moneys so pledged and thereafter received by the bond bank are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the bond bank, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the bond bank.

SECTION 6. AMENDMENT. Section 6-09.4-13 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-13. Personal liability. Neither the members of the industrial commission nor any person executing bonds issued pursuant to this chapter or chapter 40-57 is liable personally on such bonds by reason of the issuance thereof.

SECTION 7. AMENDMENT. Subsection 1 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the municipal bond bank or any successor in interest to the municipal bond bank for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the municipal bond bank or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.

SECTION 8. MUNICIPAL BOND BANK PROGRAM LIMITS. Any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the municipal bond bank under this Act may not exceed two million dollars per political subdivision or other contracting party, as the case may be, and twenty million dollars in total for the biennium beginning July 1, 2005, and ending June 30, 2007, except that these limits do not apply to revenue bonds issued by the municipal bond bank under chapter 40-57 if the industrial commission approves a resolution under the second sentence of subsection 4 of section 6-09.4-10 making that subsection inapplicable to bonds issued under the resolution.

Approved March 9, 2005
Filed March 9, 2005

⁶⁴ Section 6-09.4-09 was also amended by section 9 of Senate Bill No. 2074, chapter 89.

CHAPTER 91

HOUSE BILL NO. 1132

(Industry, Business and Labor Committee)

(At the request of the Bank of North Dakota)

FAMILY FARM SURVIVAL LOAN PARTICIPATION INTEREST

AN ACT to amend and reenact subsection 2 of section 6-09.9-03 of the North Dakota Century Code, relating to participation interest purchased by the Bank of North Dakota in Family Farm Survival Act operating loans to farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.9-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or two hundred fifty thousand dollars, whichever is less. The term of any participation interest purchased under this section may not exceed one year.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 92

HOUSE BILL NO. 1131

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

FAMILY FARMERS ACT LOANS

AN ACT to amend and reenact subsection 2 of section 6-09.11-03 and subsection 4 of section 6-09.11-05 of the North Dakota Century Code, relating to participation interest purchased by the Bank of North Dakota and the maximum net worth of an applicant for a Financial Assistance for Family Farmers Act loan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.11-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of ~~one~~ two hundred fifty thousand dollars or ninety percent of the loan amount.

SECTION 2. AMENDMENT. Subsection 4 of section 6-09.11-05 of the North Dakota Century Code is amended and reenacted as follows:

4. The net worth of the applicant does not exceed ~~two~~ three hundred thousand dollars.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 93

HOUSE BILL NO. 1133

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

PACE LOAN QUALIFICATIONS

AN ACT to amend and reenact subsection 1 of section 6-09.14-01 of the North Dakota Century Code, relating to the definition of qualified businesses to which Partnership in Assisting Community Expansion Act loans may be made.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.14-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Business" means a corporation, limited liability company, partnership, individual, or association involved in manufacturing, processing, value-added processing, and targeted ~~service~~ industries as defined by the Bank of North Dakota.

Approved March 4, 2005
Filed March 4, 2005

CHAPTER 94

SENATE BILL NO. 2217

(Senators Klein, Grindberg, Taylor)
(Representatives DeKrey, Mueller, Pollert)

BIODIESEL PRODUCTION INCENTIVES

AN ACT to create and enact chapter 6-09.17, two new sections to chapter 57-38, a new subsection to section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a biodiesel partnership in assisting community expansion program, corporate and individual income tax credits, and a sales tax exemption for blending of biodiesel fuel and purchase of biodiesel production equipment; to amend and reenact section 7 of chapter 531 of the 2003 Session Laws, relating to extending the time special fuels tax reductions are available for biodiesel fuel; to provide an appropriation; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 6-09.17 of the North Dakota Century Code is created and enacted as follows:

6-09.17-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel production facilities as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.

6-09.17-02. Biodiesel partnership in assisting community expansion fund - Continuing appropriation - Administration. A biodiesel partnership in assisting community expansion fund is hereby established. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund.

6-09.17-03. Fund - Purpose - Interest rate buydown. Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's

participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

6-09.17-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel production facility for the following eligible uses:
 - (1) Purchase of real property and equipment.
 - (2) Expansion of facilities.
 - (3) Working capital.
 - (4) Inventory.
- b. The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.
2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.
3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
4. The maximum amount from the fund in the interest rate buydown may not exceed four hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The fund participation must be limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
5. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for blending of biodiesel fuel. A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for biodiesel sales equipment costs. A seller of biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

⁶⁵ **SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

⁶⁵ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317,

A taxpayer filing a return under this section is entitled to the credits provided under sections 2 and 3 of this Act.

⁶⁶ **SECTION 5.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.

⁶⁷ **SECTION 6. AMENDMENT.** Section 7 of chapter 531 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, ~~2005~~ 2007, and are thereafter ineffective.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the Bank of North Dakota for deposit in the biodiesel partnership in assisting community expansion fund for use as provided in chapter 6-09.17, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. EFFECTIVE DATE. Sections 2, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2004. Section 5 of this Act is effective for taxable events occurring after June 30, 2005.

Approved April 22, 2005
Filed April 25, 2005

section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

⁶⁶ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, and section 1 of Senate Bill No. 2176, chapter 573.

⁶⁷ Section 24-02-01.5 was also amended by section 1 of Senate Bill No. 2154, chapter 341, and section 1 of Senate Bill No. 2208, chapter 340.

CHAPTER 95

SENATE BILL NO. 2165

(Senators Trenbeath, Espegard, Heitkamp)
(Representatives Hawken, Herbel)

BANK LOGO UNAUTHORIZED USE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the unauthorized use of the name or logo of a bank, trust company, savings association, savings bank, or affiliated entity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Unlawful use of name or logo. A person may not use the name or logo of any bank, trust company, savings association, or savings bank or of an affiliate of such financial institution in connection with the sale, distribution, offer for sale, advertisement, or promotion of any product or service without first obtaining the written consent of the bank, trust company, savings association, savings bank, or affiliate. A person may not use the name or logo of a bank, trust company, savings association, savings bank, or affiliate in a manner that will make it difficult to understand or will mislead an individual about the source of origin, affiliation, or sponsorship of a product or service or about the true identity source of a communication regardless of the nature of the communication.

Civil liability - Attorney's fees. A person that violates this chapter is civilly liable to the bank, trust company, savings association, savings bank, or affiliate for each unlawful use of a name or logo in the amount of one thousand dollars or actual damages, whichever is greater, plus reasonable attorney's fees.

Injunction. A court may enjoin the use of a name or logo which violates this chapter. An action for injunction under this section is in addition to any other remedy that may be available.

Penalty. A person that willfully violates this chapter is guilty of a class B misdemeanor.

Approved March 9, 2005
Filed March 9, 2005

CARRIAGE

CHAPTER 96

HOUSE BILL NO. 1065

(Representatives Koppelman, Klein, Weisz, Delmore)
(Senators Robinson, Wardner)

MIDWEST INTERSTATE PASSENGER RAIL COMPACT

AN ACT to provide for adoption of the midwest interstate passenger rail compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Midwest interstate passenger rail compact. The midwest interstate passenger rail compact is enacted by this state and entered with all other states legally joining therein in the form substantially as follows:

ARTICLE 1 - STATEMENT OF PURPOSE

The purposes of this compact are, through joint or cooperative action:

1. To promote development and implementation of improvements to intercity passenger rail service in the midwest;
2. To coordinate interaction among midwestern state-elected officials and their designees on passenger rail issues;
3. To promote development and implementation of long-range plans for high-speed rail passenger service in the midwest and among the regions of the United States;
4. To work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote midwestern interests regarding passenger rail; and
5. To support efforts of transportation agencies involved in developing and implementing passenger rail service in the midwest.

ARTICLE 2 - COMMISSION

To further the purposes of the compact, a commission is created to carry out the duties specified in this compact.

ARTICLE 3 - MEMBERSHIP

1. The manner of appointment of commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies must be determined by each party state pursuant to its laws, but each commissioner must be a resident of the state of appointment.

Commission members shall serve without compensation from the commission.

2. The commission consists of four resident members of each state as follows: the governor or the governor's designee, who shall serve during the tenure of office of the governor, or until a successor is named; one member of the private sector, appointed by the governor to serve during the tenure of the office of the governor, or until a successor is named; and two legislators, one from each house appointed by the chairman of the legislative council to serve two-year terms, or until successors are appointed. All vacancies must be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term. Each member state must have equal voting privileges, as determined by the commission bylaws.

ARTICLE 4 - POWERS AND DUTIES

1. The duties of the commission are to:
 - a. Advocate for the funding and authorization necessary to make passenger rail improvements a reality for the region;
 - b. Identify and seek to develop ways that states can form partnerships, including with rail industry and labor, to implement improved passenger rail in the region;
 - c. Seek development of a long-term, interstate plan for high-speed rail passenger service implementation;
 - d. Cooperate with other agencies, regions, and entities to ensure that the midwest is adequately represented and integrated into national plans for passenger rail development;
 - e. Adopt bylaws governing the activities and procedures of the commission and addressing the powers and duties of officers, the voting rights of commission members, voting procedures, commission business, and any other purposes necessary to fulfill the duties of the commission;
 - f. Expend funds as required to carry out the powers and duties of the commission; and
 - g. Report on the activities of the commission to the governor of each member state on an annual basis.
2. In addition to its exercise of these duties, the commission is empowered to:
 - a. Provide multistate advocacy necessary to implement passenger rail systems or plans, as approved by the commission;
 - b. Work with local elected officials, economic development planning organizations, and similar entities to raise the visibility of passenger rail service benefits and needs;

- c. Educate other state officials, federal agencies, other elected officials, and the public on the advantages of passenger rails as an integral part of an intermodal transportation system in the region;
- d. Work with federal agency officials and members of Congress to ensure the funding and authorization necessary to develop a long-term interstate plan for high-speed rail passenger service implementation;
- e. Make recommendations to member states;
- f. If requested by each state participating in a particular project and under the terms of a formal agreement approved by the participating states and the commission, implement or provide overview for specific rail projects;
- g. Establish an office and hire staff as necessary;
- h. Contract for or provide services;
- i. Assess dues, in accordance with the terms of this compact;
- j. Conduct research; and
- k. Establish communities.

ARTICLE 5 - OFFICERS

The commission annually shall elect from among its members a chairman, a vice chairman who is not a resident of the state represented by the chairman, and others as approved in the commission bylaws. The officers shall perform functions and exercise powers as are specified in the commission bylaws.

ARTICLE 6 - MEETINGS AND ADMINISTRATION

The commission shall meet at least once in each calendar year and at other times as may be determined by the commission. Commission business must be conducted in accordance with the procedures and voting rights specified in the bylaws.

ARTICLE 7 - FINANCE

Except as otherwise provided, the moneys necessary to finance the general operations of the commission in exercising its duties, responsibilities, and powers must be appropriated to the commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states. This compact does not commit a member state to participate in financing a rail project except as provided by law of a member state.

The commission may accept, for any of its purposes and functions, donations, gifts, grants, and appropriations of money, equipment, supplies, materials, and services from the federal government, from any party state or from any state agency or political subdivision, or from any person. All expenses incurred by the commission must be paid by the commission out of the funds available to it. The commission may not issue any debt instrument. The commission shall submit to the officer designated by the laws of each party state, periodically as required by the

laws of each party state, a budget of its actual past and estimated future expenditures.

ARTICLE 8 - ENACTMENT, EFFECTIVE DATE, AND AMENDMENTS

The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin are eligible to join this compact. Upon approval of the commission, according to its bylaws, other states may be declared eligible to join the compact. As to any eligible party state, this compact becomes effective when its legislature has enacted the same into law; provided that it may not become initially effective until enacted into law by any three party states. Amendments to the compact become effective upon their enactment by the legislatures of all compacting states.

ARTICLE 9 - WITHDRAWAL, DEFAULT, AND TERMINATION

Withdrawal from this compact must be by enactment of a statute repealing the compact and must take effect one year after the effective date of the repeal. A withdrawing state is liable for any obligations that it may have incurred before the effective date of withdrawal. If any compacting state at any time defaults in the performance of any of its obligations, assumed or imposed, in accordance with this compact, all rights, privileges, and benefits conferred by this compact or agreements under this compact must be suspended from the effective date of the default as fixed by the commission and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless the default is remedied under the stipulations and within the time period set by the commission, this compact may be terminated with respect to the defaulting state by affirmative vote of a majority of the other commission members. Any defaulting state may be reinstated, upon vote of the commission, by performing all acts and obligations as stipulated by the commission.

ARTICLE 10 - CONSTRUCTION AND SEVERABILITY

The provisions of this compact are severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability to any government, agency, person, or circumstance is not affected. If this compact is held contrary to the constitution of any compacting state, the compact remains in effect as to the remaining states and in effect as to the state affected as to all severable matters. This compact must be liberally construed to effectuate its purposes.

Approved March 31, 2005

Filed March 31, 2005

CORPORATIONS

CHAPTER 97

HOUSE BILL NO. 1176

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAWS REVISIONS

AN ACT to amend and reenact section 10-04-02, subsection 1 of section 10-04-03, sections 10-04-05 and 10-04-06, subsections 2 and 3 of section 10-04-07.1, sections 10-04-08 and 10-04-08.3, subsection 2 of section 10-04-08.4, sections 10-04-09 and 10-04-10, subsections 1 and 2 of section 10-04-10.3, sections 10-04-11, 10-04-12, 10-04-15, and 10-04-16, subsection 1 of section 10-04-16.1, section 10-04-17, and subsections 1 and 2 of section 10-04-18 of the North Dakota Century Code, relating to definitions under the securities laws, securities exemptions and exempt transactions, registration and sale of securities, and registration of broker-dealers, agents, investment advisers, and investment adviser representatives; and to repeal section 10-04-07 of the North Dakota Century Code, relating to securities registration by description.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means ~~any~~ an individual, other than a ~~dealer~~ broker-dealer, who represents a ~~dealer~~ broker-dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include However, a partner, officer, or director of a broker-dealer, or an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934 having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term.
2. "~~Commissioner~~ Bank" means ~~the securities commissioner of this state;~~
 - a. A bank institution organized under the laws of the United States;
 - b. A member bank of the federal reserve system;
 - c. Any other banking institution, whether or not incorporated, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving

deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

d. A receiver, conservator, or other liquidating agent of any institution or firm included in subdivision a, b, or c.

3. ~~"Dealer Broker-dealer"~~ means a person, ~~other than an agent~~, engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include a:

a. An agent; or

b. A bank or savings institution if its activities as a ~~dealer broker-dealer~~ are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934.

4. "Commissioner" means the securities commissioner of this state.

5. "Department" means the state securities department.

6. "Depository institution" means:

a. A bank; or

b. A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union shares insurance fund, or a successor authorized by federal law. The term does not include:

(1) An insurance company or other organization primarily engaged in the business of insurance;

(2) A Morris plan bank; or

(3) An industrial loan company.

~~5.~~ 7. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

~~6.~~ 8. "Federal covered security" means ~~any~~ a security that is, or upon completion of a transaction will be, a covered security pursuant to

section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.

9. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
- a. A depository institution or international banking institution;
 - b. An insurance company;
 - c. A separate account of an insurance company;
 - d. An investment company as defined in the Investment Company Act of 1940;
 - e. A broker-dealer under the Securities Exchange Act of 1934;
 - f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;
 - g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
 - h. A trust, if it has total assets in excess of ten million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subdivision f or g, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
 - i. An organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;
 - j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958 with total assets in excess of ten million dollars;

- k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 with total assets in excess of ten million dollars;
- l. A federal covered investment adviser acting for its own account;
- m. A qualified investment buyer as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;
- n. A major United States institutional investor as defined in rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934; or
- o. Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter.

~~7.~~ 10. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. ~~"Investment adviser" also~~ The term includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. ~~"Investment adviser"~~ The term does not include:

- a. An investment adviser representative.
- b. A bank, savings institution, or trust company.
- c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
- d. ~~A broker or dealer~~ broker-dealer or its agent whose performance of these services is solely incidental to the conduct of business as a ~~broker or dealer~~ broker-dealer and who receives no special compensation for them.
- e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
- f. A federal covered adviser.
- g. A person who is ~~exempted~~ excluded by the Investment Advisers Act of 1940 from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

- h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

8. 11. a. "Investment adviser representative" means:

- a. ~~With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other~~ An individual who is either employed by or associated with an investment adviser who is registered or required to be registered under this chapter or federal covered adviser and who:

- (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
- (2) Manages the accounts or portfolios of clients;
- (3) Determines which recommendations or advice regarding securities should be given;
- (4) ~~Solicits, offers, or negotiates~~ Provides investment advice or holds out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or sells investment advisory services; or
- (5) Immediately supervises employees in the performance of any of the foregoing.

- b. ~~With respect to a federal covered adviser, any person who is an "investment adviser representative"~~ The term does not include an individual who:

- (1) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as those terms are that term is defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.

- c. ~~"Investment adviser representative" does not include~~

- (2) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.
- (3) Performs only clerical or ministerial personnel acts.

9. 12. "Issuer" means every person who issues or proposes to issue any security, except that:

- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, ~~certificates of interest,~~ or shares in an unincorporated investment trust, ~~whether or not of the fixed, restricted management, or unit type,~~ issuer means the person or persons performing the acts and assuming the duties of depositor

or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

- b. With respect to equipment trust certificates or like securities serving the same purpose, issuer means the person by whom the equipment or property is or ~~is to~~ will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
- c. With respect to fractional interests in an oil, gas, or other mineral rights lease or in payments out of production under a lease, right, or royalty, issuer means the owner of any such right or any interest in such rights lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, ~~which are created~~ that creates fractional interests for the purpose of sale.
- d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

40- 13. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. ~~Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:~~

- a. ~~The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;~~
- b. ~~No money or other tangible property is given for the option; and~~
- c. ~~The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.~~

44- 14. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a ~~joint-stock joint company~~ joint venture, a trust, a government, governmental subdivision, agency, or instrumentality, or any other ~~unincorporated organization~~ legal or commercial entity.

42- "Registered agent" means an agent registered under this chapter.

43- "Registered dealer" means a dealer registered under this chapter.

44- 15. "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

- a. An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or
- b. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

16. "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

17. "Record" except in phrases "of record", "official record", and "public 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.

18. "Sale" or "sell" means every sale, contract to sell, or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. The term includes:

- a. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
- b. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

45- 19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary

or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

~~46-~~ 20. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

21. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.2;
- b. The assignment of a life insurance policy to a bank, ~~savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan~~ or depository institution; or
- c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The state securities department is under the supervision of a chief officer designated as the securities commissioner. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter ~~and, or any security which is exempt based on the approval of the securities department.~~ The commissioner may not be an officer, director, or employee of any dealer broker-dealer, salesman agent, investment adviser, or investment adviser representative required to be registered under this chapter, or of a federal covered adviser required to be notice-filed under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It is the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner,

North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the commissioner, the deputy or designee of the commissioner shall administer the provisions of this chapter as acting commissioner.

⁶⁸ **SECTION 3. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

10-04-05. Exempt securities. Sections 10-04-04, ~~10-04-07~~, 10-04-07.1, 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. ~~Securities~~ A security, including a revenue obligation or a separate security as defined in rule 131 adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States of America, or by any a state, territory, or insular possession thereof, or by any a political subdivision of any such a state, territory, or insular possession, or by the District of Columbia, or by any a public authority, agency, or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; states, by a political subdivision of one or more states, or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress, or a certificate of deposit for any of the foregoing, ~~but except that this exemption does not include any a municipal security with respect to the offer or sale in this state if the security is payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise, unless the security is insured such payments are made or unconditionally guaranteed by; or the revenues are derived from, a person whose securities are exempt from registration under this section or the issuer first files a notice in a record specifying the terms of the proposed offer or sale and pays a nonrefundable filing fee of one hundred dollars.~~
2. Securities issued by and representing or that will represent an interest in or a ~~debt~~ direct obligation of, or ~~be~~ guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an Act of Congress and supervised by the United States, or any agency thereof, a banking institution organized under the laws of the United States, a member bank of the federal reserve system, or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of Public

⁶⁸ Section 10-04-05 was also amended by section 2 of Senate Bill No. 2032, chapter 151.

Law 87-722 or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; ~~or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of financial institutions of North Dakota.~~

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. ~~Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or, other common carrier, public service utility, if the corporation or limited liability company is subject to regulation or supervision either as or public utility holding company that is regulated in respect to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of by the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof a state, regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory, or a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.~~
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
 - a. Apply for and obtain the written approval of the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
 - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
 - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to

be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which has at the time of issuance a definite maturity of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale.
8. Securities, including patronage dividends or refunds, issued by any cooperative organized under the statutes of this state.
9. ~~Any An equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, trust certificate with respect to equipment leased, or conditionally sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security when the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note~~ a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933.
10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 9, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby.
11. The execution of orders for purchase of securities by a registered ~~dealer broker-dealer~~ provided such dealer broker-dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer broker-dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker broker-dealer.
12. Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 10-30.1; provided that prior to any offer of such security, the issuer must meet each of the following conditions:
 - a. Apply for and obtain written approval by the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.

- c. File such additional information as the commissioner requires by rule or order or may subsequently request.
- d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
- e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
- f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

- 13. Any security issued, insured, or guaranteed by ~~Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other~~ a foreign government with which the United States currently maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor. ~~This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.~~
- 14.
 - a. ~~Any security, other than a security that is a~~ A federal covered security ~~pursuant to specified in section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, or by rule adopted under that provision or a security listed or designated, or approved for listing or designation upon notice of issuance on:~~
 - (1) The New York stock exchange;
 - (2) The American stock exchange;
 - (3) The national association of securities dealers automated quotation national market system;
 - (4) Tier I of the Philadelphia stock exchange, incorporated;
 - (5) Tier I of the Pacific ~~stock~~ exchange, incorporated;
 - (6) Chicago board options exchange, incorporated; or
 - (7) Any other stock exchange or automated quotation system which the ~~commissioner~~ securities and exchange commission approves by rule;
 - b. ~~Any other security of the same issuer which is of senior or substantially equal rank;~~

- e. Any security called for by subscription rights or warrants so listed or approved; or
 - d. Any warrant or right to purchase or subscribe to any of the foregoing. The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that it would be in the public interest. A put or call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934.
15. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
 16. A security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system.

SECTION 4. AMENDMENT. Section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, ~~10-04-07~~, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. ~~Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale~~ A transaction by a an executor, administrator of an estate, sheriff, marshal, receiver, guardian, conservator, or trustee in insolvency or bankruptcy.
2. The sale, in good faith and not for the purpose of avoiding the provisions of this chapter, by a pledgee of securities pledged for a bona fide debt.
3. ~~Any~~ An isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, ~~dealer~~ broker-dealer, or agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any ~~dealer~~ broker-dealer or agent participating in an isolated sale from registering in accordance with section 10-04-10; ~~nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.~~

4. Securities dividends or other distributions by a corporation, cooperative, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or cooperative, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a ~~dealer~~ broker-dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders, partners, or members pursuant to the articles of incorporation, bylaws, partnership agreement, articles of organization, member-control agreement, or the applicable corporation, partnership, or limited liability company statute on a merger, consolidation, ~~reclassification~~ exchange of securities, or sale of corporate, partnership, or limited liability company assets in consideration of the issuance of securities of another corporation, partnership, or limited liability company, other reorganization to which the issuer, or its parent or subsidiary and the other person or its parent or subsidiary, are parties, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, or the solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933.
7. ~~The issuance and delivery of any securities in exchange for any other securities~~ A transaction under an offer to existing security holders of the same issuer pursuant to a right of conversion entitling the holder of the, including persons that at the date of the transaction are holders of convertible securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.
8. ~~The sale~~ A nonissuer transaction by or through a registered dealer broker-dealer and agent, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that both of which are registered or exempt from registration under this chapter, or a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

- a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- b. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;
- ~~b.~~ c. Such securities do not constitute the whole or part of an unsold allotment to, or subscription or participation by such dealer, the broker-dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter, of the security or a redistribution;
- e. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.
- d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin Fitch investor service, incorporated, or are filed under section 13 or 15(d) of the Federal Securities and Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.];
- e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States; and
- f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies. Any one of the following requirements is met:
 - (1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
 - (2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

- (4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) ~~No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those~~ Except for offers or sales with respect to persons designated in subsection 5, no security may be offered or sold under this subdivision except to a dealer through or by a broker-dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
 - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.

The commissioner may, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition in paragraph 1.

- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
- (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) ~~No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those~~ Except with respect to offers and sales made to persons designated in subsection 5, no security may be sold under this subdivision except reasonable and customary commissions paid through or by the issuer to a dealer broker-dealer and agent registered in

this state in connection with the offer or sale of the security to a resident of this state accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, is used in connection with any offers or sales.
- (5) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree prior to the sale of the security.
- (6) The gross proceeds of the offering may not exceed five million dollars.
- (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

The commissioner may withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6.

- c. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.
- d. The exemptions provided under subdivisions a and b may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:
 - (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
 - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit,

including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

- (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.
 - (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
 - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
- f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employee's stock purchase, savings, ~~pension option~~, profit-sharing, ~~a self-employed person's retirement plan pension~~, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees.

12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed one hundred dollars in connection with the transaction.
13. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
14. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
 - (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
 - (2) The issuer may solicit indications of 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 unless the person who receives the commission or fee is registered as a ~~dealer~~ broker-dealer or agent in this state.
 - (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
 - (4) The issuer 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.

- (5) The issuer 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.
- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- (8) The issuer 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.
- (9) The issuer 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 or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
 - (a) Has 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 or use of any exemption from registration in connection with the 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 within five years prior to the filing of the solicitation of interest form; or

- (b) Has 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, conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the ~~dealer~~ broker-dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.
 - (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
 - (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;
 - (b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
 - (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
 - (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.

- (2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its business and products, its address and telephone number, and the following legends:
 - (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;
 - (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and
 - (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.
 - c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.
- 16. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.
- 17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
 - a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
 - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
 - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
 - d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the

issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
 - (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:

- (a) The name, address, and telephone number of the issuer of the securities;
 - (b) The name, a brief description, and price, if known, of any security to be issued;
 - (c) A brief description of the business of the issuer in twenty-five words or less;
 - (d) The type, number, and aggregate amount of securities being offered;
 - (e) The name, address, and telephone number of the person to contact for additional information; and
 - (f) A statement that:
 - [1] Sales will only be made to accredited investors;
 - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
 - f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
 - (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
 - g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
 - h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
 - i. The issuer shall file with the department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a ~~dealer~~ broker-dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.
20. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
- a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - b. A general solicitation or general advertisement of the transaction is not made; and
 - c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this Act as a broker-dealer or as an agent.
21. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

⁶⁹ **SECTION 5. AMENDMENT.** Subsection 2 of section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Securities entitled to registration by announcement may be registered only by a ~~dealer~~ broker-dealer registered with the department as provided for in section 10-04-10 by filing with the department a written announcement of intention to trade in the securities containing the following:
- a. Name of issuer and location of the headquarters or principal office.
 - b. A brief description of the security, including price and current earnings.
 - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
 - d. A balance sheet not more than twelve months old.
 - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.

⁶⁹ Section 10-04-07.1 was also amended by section 6 of House Bill No. 1176, chapter 97.

⁷⁰ **SECTION 6. AMENDMENT.** Subsection 3 of section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The filing of such announcement with the department constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such ~~dealer~~ broker-dealer shall pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered ~~dealers~~ broker-dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered by the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.

SECTION 7. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by qualification must be made by the issuer of the securities or by a registered ~~dealer~~ broker-dealer by filing with the department:

1. An application for registration, which must be made in writing or on forms prescribed by the commissioner, must contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
 - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the

⁷⁰ Section 10-04-07.1 was also amended by section 5 of House Bill No. 1176, chapter 97.

application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.

- c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
- d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
- f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
- g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any

- business, the same financial statements which would be required if the business were the registrant.
- p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. Payment of a filing fee for each security or class of security to be registered as follows:
 - a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - c. In no event may such filing fee be less than one hundred dollars for each security or class of security to be registered.
 - d. Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
 - e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred dollars.
 3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.
 4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any

application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the fee be returned.

Registration under this section is effective for a period of one year.

SECTION 8. AMENDMENT. Section 10-04-08.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.3. Unlawful representations concerning registration or exemption.

1. Neither the fact that an application for approval under section 10-04-05 or 10-04-06 or registration under section ~~10-04-07~~, 10-04-07.1, 10-04-08, or 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that a security or person is effectively approved or registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.
2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

SECTION 9. AMENDMENT. Subsection 2 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold ~~upon a filing of~~ under the following conditions:
 - a. A notice of intent is filed in writing on SEC form D or other prescribed form with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.
 - b. A copy of any document filed with the securities and exchange commission is provided, as the commissioner may require.

- c. The notice filing is effective for a period of one year from the date the filing is received by the commissioner.
- d. The filing fee shall be two hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

~~For any~~ No security may be offered or sold under this subsection, no commission or other remuneration may be paid, either directly or indirectly, for soliciting any prospective buyer in this state, except to through or by a dealer, broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

SECTION 10. AMENDMENT. Section 10-04-09 of the North Dakota Century Code is amended and reenacted as follows:

10-04-09. Suspension or revocation of registration of securities. The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that any provisions of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, or if the commissioner finds any of the following:

1. The sale of such securities would work or tend to work a fraud, or deception upon the purchasers thereof or the public, or that the disposal of the securities is on unfair terms, or if the plan of business of the applicant appears to be unfair, unjust, or inequitable.
2. The issuer of such securities is insolvent, or has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law.
3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities.
4. The issuer of such securities has refused to permit an examination into its affairs as provided in this section or has failed to furnish the commissioner any further information required pursuant to this section.
5. ~~Securities registered by description were not entitled to registration by description.~~
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

If the commissioner has reasonable grounds to believe that the registration of any securities registered under this chapter should be revoked upon any ground specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or the commissioner's agent may conduct such an examination only if the information sought by such examination could not be obtained from other readily available sources. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the

books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or the issuer's income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, the commissioner may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the commissioner shall point out or to be brought down to the latest practicable date. Such examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

If the commissioner has reasonable grounds to believe that the registration of any securities under this chapter should be revoked on any ground specified in this section, the commissioner may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such suspension order shall be effective for more than thirty days and such an order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities.

If the commissioner finds, after a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds for revoking the registration of certain securities, the commissioner may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities. No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

SECTION 11. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of ~~dealers~~ broker-dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers. ~~A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.~~

1. ~~Dealers. Broker-dealers.~~ It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this Act as a broker-dealer or is exempt. The following persons are exempt from the registration requirements:
 - a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
 - (1) The issuer of the securities involved in the transactions;

- (2) A broker-dealer registered as a broker-dealer under this Act or not required to be registered as a broker-dealer under this Act;
- (3) An institutional investor;
- (4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;
- (5) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer maintains a principal place of residence; and
- (6) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
 - (a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
 - (b) Within thirty days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than forty-five days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause.
- b. A person that deals solely in United States government securities and is supervised as a broker-dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration broker-dealer must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a ~~dealer~~ broker-dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such ~~dealer~~ broker-dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a ~~dealer~~ broker-dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a ~~dealer~~ broker-dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the ~~dealer~~ broker-dealer and the ~~dealer's~~ broker-dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the ~~dealer~~ broker-dealer and the ~~dealer's~~ broker-dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a ~~dealer~~ broker-dealer, the commissioner shall notify the applicant of such registration.

2. Agent. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this Act as an agent or is exempt from registration. The following individuals are exempt from the registration requirements:
 - a. An individual who represents a broker-dealer in effecting transactions in this state limited to those in section 15(h)(2) of the Securities Exchange Act of 1934;
 - b. An individual who represents a broker-dealer that is exempt under subsection 1 of this section;
 - c. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; or

- d. An individual who represents a broker-dealer registered in this state or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

Application for registration as an agent ~~may be made by any individual eighteen years of age or older.~~ Such application for ~~registration~~ must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered ~~dealer~~ broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, ~~or have been registered by description under section 10-04-07,~~ or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the ~~dealer~~ broker-dealer named on the application is not a registered ~~dealer~~ broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the ~~broker~~ broker-dealer of such registration.

Every registered ~~dealer~~ broker-dealer or issuer shall promptly notify the department of the termination of the employment by the ~~dealer~~ broker-dealer or issuer of a registered agent.

3. Investment advisers.

- a. It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this Act as an investment adviser or is exempt from registration as an investment adviser. The following persons are exempt from the registration requirements:
- (1) ~~The~~ A person without a place of business in this state that is registered under this chapter; under the securities laws of the state in which the person has its principal place of business if its only clients in this state are:
 - (a) Federal covered investment advisers, investment advisers registered under this Act, or broker-dealers registered under this Act;
 - (b) Institutional investors; or
 - (c) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities laws of the state in which the clients maintain principal places of residences.
 - (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or
 - ~~(3)~~ Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission; if the investment adviser has no A person without a place of business in this state and if the person has had, during the preceding twelve-month period has had twelve months not more than six five clients; other than resident in this state in addition to those specified in paragraph 2; who are residents of this state paragraph 1.
- b. Application for registration as an investment adviser ~~may be made by any person eighteen years of age or older. Such application for registration~~ must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary

to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the department of any change of address.

4. Federal covered adviser.

a. ~~Except with respect to a federal covered investment adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3 described in subdivision b,~~ it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

b. The following federal covered investment advisers are not required to comply with the notice filing requirement:

(1) A federal covered investment adviser without a place of business in this state if its only clients are:

(a) Federal covered investment advisers, investment advisers registered under this Act, and broker-dealers registered under this Act;

(b) Institutional investors; or

(c) Bona fide preexisting clients whose principal places of residence are not in this state.

- (2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph 1.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the department.

5. Investment adviser representatives. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this Act as an investment adviser representative or is exempt from registration as an investment adviser representative or that the investment adviser representative is employed by or associated with an investment adviser that is exempt from registration or a federal covered investment adviser that is excluded from the notice filing requirements.

~~Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed with the department, and contain information the commissioner determines to be necessary concerning the applicant.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner, as required by subsection 4. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the

department of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered ~~dealer~~ broker-dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a ~~dealer's~~ broker-dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.
7. Record and renewal of registrations. The names and addresses of all persons who have been registered as ~~dealers~~ broker-dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of ~~dealers~~ broker-dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
 - a. For each ~~dealer~~ broker-dealer \$200.00
 - b. For each agent \$60.00

- c. For each investment adviser or federal covered adviser \$100.00
- d. For each investment adviser representative \$50.00

An application to register as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

⁷¹ **SECTION 12. AMENDMENT.** Subsection 1 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Every ~~registered dealer~~ broker-dealer, agent, investment adviser, and investment adviser representative conducting business in this state shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as ~~the commissioner prescribes by rule 6.~~ described below:
 - a. With the exclusion of a broker-dealer whose activities are limited to the sale of securities that it issues and who is not a member or required to be a member of any self-regulatory organization, every broker-dealer registered in or conducting business in this state, and each branch office located in or conducting business in this state, must keep and maintain all records as required by:
 - (1) Federal statutes or by rules or regulations promulgated by the securities and exchange commission.
 - (2) Rules promulgated by any securities exchange or self-regulatory organization of which the broker-dealer is a member.
 - (3) The laws, rules, or regulations of any state in which the broker-dealer is registered or maintains a place of business from which it conducts securities business in North Dakota.
 - b. Every investment adviser which maintains its principal place of business in any state, other than this state, and is registered as an investment adviser in the state in which it maintains its principal place of business, shall keep and maintain such books and records as required by the state in which it maintains its principal place of business.
 - c. Every investment adviser which maintains its principal place of business in this state, or is not registered or exempt from registration in the state in which it maintains its principal place of business, shall keep and maintain the following books and records for a period of three years:

⁷¹ Section 10-04-10.3 was also amended by section 13 of House Bill No. 1176, chapter 97.

- (1) Financial documents of the investment adviser which shall include:
 - (a) Journals and ledgers tracking income and expenses of the investment adviser. These documents must be continually maintained to within thirty days of current.
 - (b) Trial balances, financial statements, and internal audit papers.
 - (c) Checkbooks and statements on any type of account on which the investment adviser has check-writing privileges.
 - (d) Statements regarding any account of the investment adviser with any insurance company, broker-dealer, investment adviser, federal covered adviser, or financial institution.
- (2) A file which contains copies of all incoming and outgoing correspondence between the investment adviser or its representative and any of its customers, prospective customers, or former customers.
- (3) A file containing a copy of each customer complaint against the investment adviser or a representative of the investment adviser.
- (4) A file containing all advertisements used by the investment adviser or a representative of the investment adviser. To the extent that past performance of the investment adviser is used in advertising materials, the investment adviser shall maintain all accounts, records, and internal working papers that form the basis of the performance of the investment adviser.
- (5) Copies of all contracts between the investment adviser and its customers.
- (6) A manual regarding the supervisory procedures of the investment adviser, unless the investment adviser is wholly owned by the only representative of the investment adviser and the investment adviser has no employees.
- (7) With respect to discretionary accounts:
 - (a) A list of all discretionary accounts.
 - (b) A file containing all discretionary trading agreements.
 - (c) A list of all trades that were conducted on a discretionary basis.
- (8) All records created by the investment adviser or provided by a client or prospective client of an investment adviser

regarding the financial condition of the client or prospective client.

- (9) Records tracking all securities purchased by or advice provided by the investment adviser and the payment for the services if any. These records shall disclose whether the investment adviser or the investment adviser representative had any direct or indirect beneficial interest in the investment involved.
- (10) An updated copy of part II of the form ADV and a summary of all material updates to the same.
- (11) A list of all parties to whom referral fees have been paid and the amount of money paid to each such person.
- (12) A list containing the date of receipt and date of transmission of each customer check provided to the investment adviser for the purpose of deposit with the custodian of the investment adviser. Copies of each of the checks must be maintained with the list.

All records ~~so~~ required to be maintained pursuant to subdivision a or b, must be preserved for three years unless the commissioner prescribes otherwise as set forth in the rules or regulations of the jurisdiction originating the recordkeeping requirement. The commissioner may by rule for particular types of records enhance or waive the requirements of this subsection.

It is a violation of this subsection for any person who is registered, required to be registered, or is affiliated with or employed by any such entity, to create or cause to be created any record discussed in this subsection, if such record contains a material misstatement or misrepresentation regarding a customer or a customer's investments and the person knew or should have known of the falsity of the information or acted in reckless disregard of the truthfulness of the information.

⁷² **SECTION 13. AMENDMENT.** Subsection 2 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Every registered ~~dealer~~ broker-dealer, agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.

SECTION 14. AMENDMENT. Section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

10-04-11. Suspension or revocation of ~~dealer's~~ broker-dealer's, agent's, investment adviser's, and investment adviser representative's registration.

⁷² Section 10-04-10.3 was also amended by section 12 of House Bill No. 1176, chapter 97.

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the ~~dealer~~ broker-dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative:
 - a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
 - b. Is, in the case of a ~~dealer~~ broker-dealer or investment adviser, insolvent;
 - c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
 - d. Conducts business in purchasing or selling securities at such variations from current market prices as, in light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
 - e. Has failed to file with the department any financial record required pursuant to section 10-04-10.3, or has refused to permit or has otherwise impeded an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
 - f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
 - h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
 - i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative;
 - j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a ~~dealer~~ broker-dealer, agent,

investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment Advisers Act of 1940; or is the subject of a United States post-office fraud order;

- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;
- l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;
- m. Has failed reasonably to supervise the person's agents if the person is a ~~dealer~~ broker-dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or
- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

It is a violation for any person to engage in any conduct described in subdivisions a, c, d, e, f, and k and any administrative rules promulgated under any of those subdivisions, if the activities occurred in this state, or with respect to a resident of this state, or has caused or could have caused harm to investors in this state.

- 2. It is sufficient cause for revocation of registration of a ~~dealer~~ broker-dealer or investment adviser as provided in this section, in case of a partnership, corporation, limited liability company, or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association or any manager or governor of a limited liability company has been guilty of any act or omission which would be sufficient grounds for revoking the registration of an individual ~~dealer~~ broker-dealer or investment adviser.
- 3. If the commissioner has reasonable grounds to believe that the registration of any registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative should be censured, suspended, or revoked upon any grounds specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of any such registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of a registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such ~~dealer~~ broker-dealer or investment adviser as to the ~~dealer's~~ broker-dealer's or investment adviser's business and affairs.

4. If the commissioner makes written findings of fact to support the conclusion that grounds exist pursuant to subsection 1 for the commissioner to suspend or revoke any registration, the commissioner may by order summarily suspend registration pending final determination of any proceeding under this section. Upon the entry of the summary order, the commissioner shall promptly notify the applicant, as well as the employer or prospective employer if the applicant is an agent or investment adviser representative, that it has been entered and the reasons. The person subject to the order, if desiring a hearing, must make a written request for a hearing to the commissioner within fifteen days after receipt of the notice. Within fifteen days after receipt by the commissioner of a written request, the matter will be set for hearing to determine if the order should be modified, vacated, or extended pending a final determination. If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until modified or vacated by the commissioner.
5. If the commissioner finds, after affording a registered ~~dealer~~ broker-dealer, a registered agent, a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to censure, suspend, or revoke the registration of such ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, the commissioner may enter an order in the register of ~~dealers~~ broker-dealers, agents, investment advisers, and investment adviser representatives censuring, suspending, or revoking the registration of such ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative whose registration is censured, suspended, or revoked thereby at the person's business address and, if the censure, suspension, or revocation is of the registration of an agent or investment adviser representative, to the registered ~~dealer~~ broker-dealer or registered investment adviser who employs such person. Suspension or revocation of the registration of a ~~dealer~~ broker-dealer shall also suspend or revoke the registration of all of the ~~dealer's~~ broker-dealer's agents. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of an agent or investment adviser representative solely because of employment by a ~~dealer~~ broker-dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such person.
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

SECTION 15. AMENDMENT. Section 10-04-12 of the North Dakota Century Code is amended and reenacted as follows:

10-04-12. Hearings. Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of the securities, and if the application for registration of the securities was filed by a registered ~~dealer~~ broker-dealer, to the registered ~~dealer~~ broker-dealer, a

notice of opportunity for hearing. Before entering an order refusing to register any person as a ~~dealer broker-dealer~~, agent, investment adviser, or investment adviser representative, as provided in section 10-04-10, or censuring, placing limitations, suspending, or revoking the registration of any person as a registered ~~dealer broker-dealer~~, agent, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to that person, and if that person is an agent or investment adviser representative or an applicant for registration as an agent or investment adviser representative, to the registered ~~dealer broker-dealer~~ or investment adviser who employs or proposes to employ that agent or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered mail, returned receipt requested, to the addressee's business address, and the notice must state:
 - a. The order the commissioner proposes to issue.
 - b. The grounds for issuing the proposed order.
 - c. That the person to whom the notice is sent may be afforded a hearing upon request to the commissioner if the request is made within fifteen days after receipt of the notice.
2. Whenever a person requests a hearing in accordance with this section, the commissioner shall immediately set a date, time, and place for the hearing and shall notify the person requesting the hearing. The date set for the hearing must be within thirty days, but not earlier than fifteen days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting the hearing.
3. Any hearing conducted under this section must be conducted in accordance with chapter 28-32.
4. If the commissioner does not receive a request for a hearing within the prescribed time, the commissioner may enter a final order which must set forth the findings with respect to the matters involved.

SECTION 16. AMENDMENT. Section 10-04-15 of the North Dakota Century Code is amended and reenacted as follows:

10-04-15. Fraudulent practices. It shall be a fraudulent practice and it shall be unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to ~~employ~~:
 - a. Employ any device, scheme, or artifice to defraud.

3. ~~For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make; or~~
 - b. Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
4. ~~For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage; or~~
 - c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.
- 5- 3. For any person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation as part of a regular business, issues or promulgates analyses or reports relating to securities:
 - a. To employ a device, scheme, or artifice to defraud another person; or
 - b. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person or the public.
4. For any person, in connection with the offer, sale, or purchase of any security, or advising a person to offer, sell, or purchase any security, directly or indirectly, to effect a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.

SECTION 17. AMENDMENT. Section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

10-04-16. Orders, injunctions, and prosecutions for violations - Civil penalty. If it appears to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction that is prohibited by this chapter or by any order of the commissioner issued under this chapter or which is declared to be illegal in this chapter, the commissioner may:

1. Issue any order including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within fifteen days after

receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County ~~by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:~~

- a. ~~The order of the commissioner from which the appeal is taken.~~
 - b. ~~The grounds upon which a reversal or modification of the order is sought.~~
 - c. ~~A demand for a certified transcript of the record of the order according to the procedures set forth in chapter 28-32. Any order issued under this subsection is a final order if it is properly served and no hearing was requested within the required timeline. If an order issued under this subsection is sustained or modified after a hearing held in accordance with section 10-04-12, the order sustaining or modifying that order is a final order. If the final order is not appealed in accordance with the procedures set forth in chapter 28-32 or if the final order is sustained on appeal, the securities department may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.~~
2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets, and the court may assess civil penalties in an amount not to exceed ten thousand dollars for each violation of this chapter, and any rules promulgated thereunder or orders issued thereunder. The court shall not require the commissioner to post a bond.
 3. Refer any evidence available concerning the act, practice, or transaction to the appropriate criminal prosecutor who may, with or without the reference, institute the necessary criminal proceedings. The prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

SECTION 18. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may:
 - a. Make such public or private investigations within or outside of this state as deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
 - (1) For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
 - (2) No person is liable to a broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required or requested by the securities department pursuant to this subsection or required to be maintained under section 10-04-10.3, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
 - b. Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

SECTION 19. AMENDMENT. Section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

10-04-17. Remedies.

1. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally

liable to such purchaser who may sue either at law or in equity to recover the full amount paid by such purchaser, together with all taxable court costs, interest as provided in this subsection 2, and reasonable attorney's fees, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if the purchaser no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. ~~Provided:~~

1. ~~That no action may be brought under this section for the recovery of the purchase price after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation; and~~
2. ~~That no~~ No purchaser shall claim or have the benefit of this section if the purchaser shall have refused or failed to accept, within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment; ~~such~~. Any offer made pursuant to this subsection must be registered or exempt from registration under this chapter in order to preclude a subsequent civil action by the purchaser. For the purposes of this subsection, interest to shall be computed as follows:
 - a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.
 - b. In case such securities consist of other than interest-bearing obligations, at the legal rate specified in section 47-14-05, less the amount of any income received on the securities.
2. Any person that receives directly or indirectly any consideration for providing investment advice to another person and violates this chapter is liable to the other person as follows:
 - a. For violations of section 10-04-15, the person is liable for the actual damages caused by the violative conduct, interest at the rate as specified in section 47-14-05, costs, and reasonable attorney's fees, less the amount of any income received as a result of the violative conduct.
 - b. For all other violations of this chapter, or any rule promulgated thereunder, the person is liable for all income collected in connection with the violative conduct.
3. The provisions of this section do not apply to a violation of ~~subsection 4 or 3 of~~ section 10-04-08.4.
4. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

5. No action may be taken under this section after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation.
6. Each of the following persons are liable jointly and severally with and to the same effect as persons liable under this section:
 - a. A person who controls, supervises, or serves as an officer, director, or managing partner of a person liable under this section, unless the person did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.
 - b. An individual who is an employee of or associated with a person liable under this section and who materially aids the conduct giving rise to the liability, unless the individual did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.
 - c. A person who is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under this section, unless the person did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.

⁷³ **SECTION 20. AMENDMENT.** Subsection 1 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person who willfully violates any provision of this chapter, except ~~subsection 1 or 3 of section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.~~

⁷⁴ **SECTION 21. AMENDMENT.** Subsection 2 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and ~~subsections subdivisions a and c of subsection 2 and 4 of section 10-04-15,~~ means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

⁷³ Section 10-04-18 was also amended by section 21 of House Bill No. 1176, chapter 97.

⁷⁴ Section 10-04-18 was also amended by section 20 of House Bill No. 1176, chapter 97.

SECTION 22. REPEAL. Section 10-04-07 of the North Dakota Century Code is repealed.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 98

SENATE BILL NO. 2138

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

NATURAL AREAS ACQUISITION ADVISORY COMMITTEE COMPOSITION

AN ACT to amend and reenact subsection 3 of section 10-06.1-10 of the North Dakota Century Code, relating to the composition of the natural areas acquisition advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

3. Before farmland or ranchland may be purchased by a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the agriculture commissioner, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, the president of the North Dakota stockmen's association, and the chairman of the county commission of any county affected by the acquisition, or their designees. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 99

SENATE BILL NO. 2116

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

ELECTRONIC RECORDS AND SIGNATURES

AN ACT to create and enact section 10-15-01.1, a new subsection to section 10-15-36, a new subsection to section 10-15-54, and section 10-15-62 of the North Dakota Century Code, relating to legal recognition of electronic records and electronic signatures, exempting some information from open records laws, and fees for filing documents with the secretary of state; and to amend and reenact section 10-15-01 and subsection 1 of section 10-15-29 of the North Dakota Century Code, relating to definitions and officers of cooperative associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-01 of the North Dakota Century Code is amended and reenacted as follows:

10-15-01. Definitions. As used in this chapter, unless the context requires otherwise, the term:

1. "Association" includes both cooperatives and foreign cooperatives.
2. "Cooperative" means an association incorporated under this chapter.
3. "Corporation" means all corporations not associations.
4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
 - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. May be directly reproduced in paper form by the recipient through an automated process.
6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a document meeting the applicable requirements of this chapter together with the fees provided in section 10-15-54 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state shall then:

(1) Record the actual date on which the document is filed, and if different, the effective date of filing; and

(2) Record the document in the office of the secretary of state.

9. "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative bases:

a. Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per annum.

b. The foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members.

c. The foreign cooperative distributes its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.

5- 10. "Member" means a person who has been qualified and accepted for membership in an association.

SECTION 2. Section 10-15-01.1 of the North Dakota Century Code is created and enacted as follows:

10-15-01.1. Legal recognition of electronic records and electronic signatures.

1. For purposes of this chapter:

a. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

b. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

c. If a provision requires a record to be in writing, then an electronic record satisfies the requirement; and

d. If a provision requires a signature, then an electronic signature satisfies the requirement.

2. The provisions of this chapter relating to electronic records or electronic transactions do not limit or supersede any provision of chapter 9-16.

SECTION 3. AMENDMENT. Subsection 1 of section 10-15-29 of the North Dakota Century Code is amended and reenacted as follows:

1. The principal officers of a cooperative are a president, one or more vice presidents and a treasurer as prescribed in the bylaws, and a secretary; ~~and a treasurer.~~ They shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person. If the bylaws provide, the board of directors may also elect from its number a chairman and one or more vice chairmen, in which case the president and vice presidents need not be directors or stockholders.

SECTION 4. A new subsection to section 10-15-36 of the North Dakota Century Code is created and enacted as follows:

Fees paid to the secretary of state according to subsections 4, 5, and 6 are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by subsection 1 or lacks sufficient payment as required by subsections 4, 5, and 6.

SECTION 5. A new subsection to section 10-15-54 of the North Dakota Century Code is created and enacted as follows:

Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

SECTION 6. Section 10-15-62 of the North Dakota Century Code is created and enacted as follows:

10-15-62. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 100**HOUSE BILL NO. 1391**

(Representative DeKrey)

(Senator Traynor)

CORPORATION AND LLC LAW REVISIONS

AN ACT to create and enact sections 10-19.1-01.2, 10-19.1-102.1, 10-19.1-104.1, 10-19.1-104.2, 10-19.1-104.3, 10-19.1-104.4, 10-19.1-104.5, 10-19.1-104.6, 10-19.1-148.1, 10-19.1-148.2, 10-32-02.2, 10-32-106.1, 10-32-108.1, 10-32-108.2, 10-32-108.3, 10-32-108.4, 10-32-108.5, 10-32-108.6, 10-32-152.1, 10-32-152.2, 10-33-01.2, 10-33-141.1, 10-33-141.2, 45-13-01.1, 45-21-02.1, 45-21-04.1, 45-21-04.2, 45-21-07.1, 45-22-23.1, and 45-22-23.2 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; to amend and reenact sections 10-19.1-01 and 10-19.1-08, subsections 3 and 4 of section 10-19.1-10, sections 10-19.1-13, 10-19.1-20, 10-19.1-21, 10-19.1-27, and 10-19.1-39, subsections 3 and 5 of section 10-19.1-43, sections 10-19.1-52 and 10-19.1-55, subsection 2 of section 10-19.1-61.1, section 10-19.1-63, subsection 2 of section 10-19.1-70, section 10-19.1-74, subsection 1 of section 10-19.1-75, section 10-19.1-75.1, subsection 7 of section 10-19.1-76.2, subsections 2 and 3 of section 10-19.1-76.3, subsections 4 and 10 of section 10-19.1-84, section 10-19.1-87, subsections 3 and 4 of section 10-19.1-88, subsection 1 of section 10-19.1-91, subsection 1 of section 10-19.1-103, subsection 2 of section 10-19.1-104, subsection 1 of section 10-19.1-110, section 10-19.1-129, subsection 1 of section 10-19.1-141, section 10-19.1-145, subsections 1, 2, 4, and 6 of section 10-19.1-146, sections 10-19.1-147, 10-19.1-148, 10-19.1-149, 10-19.1-149.1, 10-19.1-150, 10-31-07.3 and 10-32-02, subsections 2 and 4 of section 10-32-07, section 10-32-10, subsection 2 of section 10-32-12, subsection 4 of section 10-32-13, sections 10-32-17, 10-32-20, 10-32-24, and 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 2 of section 10-32-51, sections 10-32-53 and 10-32-54, subsections 3 and 4 of section 10-32-55, sections 10-32-56 and 10-32-76, subsections 3 and 5 of section 10-32-80, section 10-32-91, subsection 1 of section 10-32-99, subsections 1 and 2 of section 10-32-100, subsections 1 and 5 of section 10-32-102, subsection 2 of section 10-32-106, subsections 1 and 4 of section 10-32-107, subsection 2 of section 10-32-108, subsection 1 of section 10-32-114, section 10-32-132, subsection 1 of section 10-32-144, section 10-32-148, subsections 1, 2, 3, 4, and 7 of section 10-32-149, sections 10-32-150, 10-32-152, 10-32-153, 10-32-153.1, 10-32-154, and 10-33-01, subsection 3 of section 10-33-06, section 10-33-10, subsection 2 of section 10-33-12, subsection 4 of section 10-33-13, sections 10-33-18, 10-33-22, and 10-33-34, subsections 3 and 5 of section 10-33-39, sections 10-33-47, 10-33-51, 10-33-72, 10-33-73, and 10-33-74, subsections 2, 5, and 7 of section 10-33-80, section 10-33-120, subsections 1 and 2 of section 10-33-123, subsection 1 of section 10-33-134, sections 10-33-138, 10-33-139, 10-33-140, 10-33-141, 10-33-142, 10-33-142.1, and 10-33-143, subsection 2 of section 10-33-145, sections 45-13-01, 45-13-02, and 45-13-04.1, subsections 3 and 4 of section 45-13-04.2, subsection 8 of section 45-13-05, sections 45-21-01, 45-21-02, 45-21-03, 45-21-04, 45-21-05, 45-21-06, 45-21-07, 45-22-01, 45-22-04,

45-22-05, 45-22-17, 45-22-21.1, 45-22-22, 45-22-23, 45-23-01, 45-23-02, 45-23-03, and 45-23-04, subsections 1 and 2 of section 45-23-05, and sections 45-23-06, 45-23-07, 45-23-08, and 45-23-09 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; and to repeal section 45-22-01.1 of the North Dakota Century Code, relating to limited liability partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 a different meaning is intended otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.
3. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including ~~a~~ the 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~~ the zip code.
4. "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, articles of conversion, and articles of dissolution.
 - b. In the case of a foreign corporation, the term includes all ~~documents~~ records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
5. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the corporation; or

- (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
- b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
- ~~7.~~ 8. "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 in the case of a limited liability company.
- ~~8.~~ 9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
- ~~9.~~ 10. "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.
- ~~40.~~ 11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
- ~~44.~~ 12. "Constituent corporation" means a corporation or a foreign corporation that:
- a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or
- b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.
- ~~42.~~ 13. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company that:
- a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
- b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- ~~43.~~ 16. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- ~~44.~~ 17. "Director" means a member of the board.
- ~~45.~~ 18. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of the corporation's shareholders in respect of the corporation's shares, 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 the corporation's shares, or otherwise.
- ~~46.~~ 19. "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.
- ~~47.~~ 20. "Domestic organization" means an organization created under the laws of this state.
- ~~48.~~ 21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~49.~~ 22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
- a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. May be directly reproduced in paper form by the recipient through an automated process.
- ~~20.~~ 23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~24.~~ 24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- ~~22.~~ 25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state ~~shall~~ did then:

- (1) Record the actual date on which the ~~document is record was~~ filed, and if different the effective date of filing; and
 - (2) Record the ~~document~~ record in the office of the secretary of state.
- ~~23.~~ 26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
- ~~24.~~ 27. "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 for which a limited liability company may be organized under chapter 10-32.
- ~~25.~~ 28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
- ~~26.~~ 29. "Good faith" means honesty in fact in the conduct of an act or transaction.
30. "Governing statute" of an organization means:
 - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, then this chapter;
 - (2) If a limited liability company, then chapter 10-32;
 - (3) If a general partnership, then chapters 45-13 through 45-21;
 - (4) If a limited partnership, then chapter 45-10.2;
 - (5) If a limited liability partnership, then chapter 45-22; and
 - (6) If a limited liability limited partnership, then chapter 45-23; and
 - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- ~~27.~~ 31. "Intentionally" means that the person referred to 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:
 - 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.

- ~~28.~~ 32. "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.
- ~~29.~~ 32. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
- ~~30.~~ 33. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
- ~~34.~~ 34. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
- ~~32.~~ 35. "Notice":
- a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
 - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
 - b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

- c. Is given, in all other cases:
- (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;
 - (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 there; or
 - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.
 - (5) When the method is fair and reasonable when all of the circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- e. Is deemed received when it is given.

~~33.~~ 36. "Officer" means an individual who is eighteen years of age or more who is:

- a. Elected, appointed, or otherwise designated as an officer by the board; or

- b. Deemed elected as an officer pursuant to section 10-19.1-56.

~~34-~~ 37. "Organization" means:

- a. Whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity~~ or any other person subject to a governing statute; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

~~35-~~ 38. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~36-~~ 39. "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.

~~37-~~ 40. "Ownership interests" means for an organization that is:

- a. ~~Shares in the case of a~~ A corporation, its shares;
- b. ~~Membership interests in the case of a nonprofit corporation or A~~ limited liability company, its membership interests; and
- c. ~~Similar interests in other organizations~~ A limited partnership, its partnership interests;
- d. A general partnership, its partnership interests;
- e. A limited liability partnership, its partnership interests; or
- f. A limited liability limited partnership, its partnership interests.

~~38-~~ 41. "Parent" of a specified corporation means a corporation ~~or, a foreign corporation, a limited liability company, or a foreign limited liability company~~ that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.

~~39-~~ 42. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
- b. If the corporation has no elected or appointed president, then the registered office of the corporation.

- 40- 43. "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.
- 44- 44. "Registered office" means the place in this state designated in ~~the a~~ corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office ~~of the corporation~~.
- 42- 45. "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.
- 43- 46. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- 44- 47. "Security" has the meaning given in section 10-04-02.
- 45- 48. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's 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.
- 46- 49. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- 47- 50. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- 48- 51. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
 - b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

- (1) The ~~document~~ record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
- (2) The signature and the ~~document~~ record are communicated by a method or medium of communication acceptable by the secretary of state.

~~49.~~ 52. "Subscriber" means a person ~~who~~ that subscribes for shares in a corporation, whether before or after incorporation.

~~50.~~ 53. "Subsidiary" of a specified corporation means:

- a. A corporation or a foreign corporation having more than fifty percent of the voting power of ~~the corporation's~~ its shares entitled to vote for directors owned directly, or indirectly through related organizations, by the specified corporation; or
- b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of ~~the limited liability company's~~ 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.

~~51.~~ 54. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~52.~~ 55. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

~~53.~~ 56. "Vote" includes authorization by written action.

~~54.~~ 57. "Written action" means:

- a. A written ~~document~~ record signed by all of the persons required to take the action; or
- b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action described.
 - (1) Each counterpart constitutes the action of the person signing; and
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

SECTION 2. Section 10-19.1-01.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-01.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
 - a. Knows of the fact;
 - b. Has received notice of the fact as provided in subsection 35 of section 10-19.1-01;
 - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
 - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
 - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
 - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
 - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
 - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 35 of section 10-19.1-01, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 35 of section 10-19.1-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 35 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
 - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
 - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is

part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
 - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
 - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 3. AMENDMENT. Section 10-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-08. Purposes. A corporation may be incorporated under this chapter for any lawful business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

SECTION 4. AMENDMENT. Subsections 3 and 4 of section 10-19.1-10 of the North Dakota Century Code are amended and reenacted as follows:

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~~ Subject to article XII of the Constitution, 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 when this chapter requires the affirmative vote of a:
 - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
 - (2) 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 5 of section 10-19.1-73.2.
 - 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.
 - s. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
- 4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
 - a. 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. 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 10-19.1-43.
 - 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. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
- k. 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.
- l. The board may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
- ~~k.~~ m. 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.~~ n. 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.~~ o. 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.~~ p. 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 10-19.1-73.2.
- ~~o.~~ q. Indemnification of certain persons is required as provided in section 10-19.1-91.
- ~~p.~~ r. 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.

⁷⁵ **SECTION 5. 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", "limited", or an abbreviation of one or more of these words.
 - c. ~~May not contain a word or phrase indicating or implying the corporation may not be incorporated under this chapter.~~

⁷⁵ Section 10-19.1-13 was also amended by section 1 of House Bill No. 1273, chapter 384, and section 2 of House Bill No. 1273, chapter 384.

- d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. d. May not contain a word or phrase ~~indicating or implying that~~ indicates or implies the corporation is:
 - (1) Is incorporated for a purpose other than a legal:
 - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
 - (b) For a purpose stated in its articles of incorporation; or
 - (2) May not be incorporated under this chapter.
- f. 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~~ record that complies with subsection ~~7 3~~, 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;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited 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~~ 45-10.2-11, 45-13-04.2, 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. 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.
- 4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
- 5. 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. 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
 - 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~~ 45-10.2-11, 45-13-04.2, 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.
- 6. 7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. 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. 8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 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 as provided in subsection 2. 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 ~~40-19.1-427~~ 10-19.1-17; 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 July 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.~~

9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

SECTION 6. AMENDMENT. Section 10-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-20. Class or series voting on amendments. The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. ~~Increase or decrease the aggregate number of authorized shares of the class or series;~~

- ~~2-~~ Increase or decrease the par value of the shares of the class or series;
- ~~3-~~ 2. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;
- ~~4-~~ 3. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;
- ~~5-~~ 4. Change the rights or preferences of the shares of the class or series;
- ~~6-~~ Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of another class or series;
- ~~7-~~ 5. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
- ~~8-~~ 6. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
- ~~9-~~ 7. Limit or deny any existing preemptive rights of the shares of the class or series; or
- ~~10-~~ 8. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

SECTION 7. AMENDMENT. Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-21. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared ~~that~~ which contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
- ~~4. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
- ~~5-~~ If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to ~~them~~ the original articles.

- 6- 5. A statement that the amendment has been adopted pursuant to this chapter.

SECTION 8. AMENDMENT. Section 10-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-27. 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 record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document record is not necessary.

SECTION 9. AMENDMENT. Section 10-19.1-39 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-39. ~~Cumulative voting~~ Voting for directors - Cumulative voting.
~~Each~~ With respect to the election of directors:

1. Unless otherwise provided in the articles and subject to subsection 2, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.
2. As provided in article XII of the Constitution of North Dakota, each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:
 - 4- a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
 - 2- b. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

SECTION 10. AMENDMENT. Subsections 3 and 5 of section 10-19.1-43 of the North Dakota Century Code are amended and reenacted as follows:

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.
 - a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
 - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication

consented to by the director to whom the notice is given is effective when given.

- c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication.

(1) Any consent so given may be relied upon until revoked by the director.

(2) However, no revocation affects the validity of any notice given before a receipt of revocation of the consent.

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, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when 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.

SECTION 11. 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, a secretary, and a treasurer and may also include one or more vice presidents and any other officers or agents as may be ~~prescribed by~~ provided in the bylaws. Each of the officers must be elected by the board at a time and in a manner as may be provided in the bylaws unless the articles or bylaws provide that the shareholders may elect the officers.

SECTION 12. 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 individual. If a ~~document~~ record 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~~ record in more than one capacity, but only if the ~~document~~ record indicates each capacity in which the individual signs.

SECTION 13. AMENDMENT. Subsection 2 of section 10-19.1-61.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Articles of amendment must be adopted by the board and the shareholders under ~~sections~~ section 10-19.1-19 and, if required, section 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
- a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
 - b. The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed

the percentage of authorized shares of that class or series that were unissued before the division or combination.

SECTION 14. AMENDMENT. Section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-63. Consideration for shares - Value and payment - Liability.

1. Subject to ~~any restrictions in article XII of the articles:~~

a. ~~The Constitution of North Dakota,~~ consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.

b. ~~Without~~

2. Subject to any restrictions in the articles, without any new or additional consideration, a corporation may issue the corporation's own shares in exchange for or in conversion of the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue the corporation's own shares pro rata to the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. Shares of a class or series, shares of which are then outstanding, may not be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

2- 3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, 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. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this section, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

- ~~3-~~ 4. A corporation may issue only shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation:
- a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
 - b. If shares are issued in violation of this subsection, the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
 - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
 - (2) The person to whom the shares were issued; and
 - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
- ~~4-~~ 5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection ~~3~~ 4 is not liable under subdivision b of subsection ~~3~~ 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.
- ~~5-~~ 6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection ~~3~~ 4 only in that capacity. The liability of the person under subdivision a of subsection ~~3~~ 4 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection ~~3~~ 4.
- ~~6-~~ 7. Each person liable under subdivision b of subsection ~~3~~ 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
- ~~7-~~ 8. An action may not be maintained against a person under subdivision b of subsection ~~3~~ 4 unless commenced within two years from the date on which shares are issued in violation of subsection ~~3~~ 4.

SECTION 15. AMENDMENT. Subsection 2 of section 10-19.1-70 of the North Dakota Century Code is amended and reenacted as follows:

2. A written restriction on the transfer or registration of transfer of securities of a corporation which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate ~~document~~ record creating or describing the restriction.

SECTION 16. 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. Unless this chapter or the articles require a greater vote or voting by class and except for the election of directors which is governed by section 10-19.1-39, 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.

If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.

2. In any case when a class or series of shares is entitled by this chapter, the articles of incorporation, 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 owners of the same proportion of the shares as is required as provided in subsection 1, unless the articles of incorporation require a larger proportion. Unless otherwise stated in the articles or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of shares of the class or series that must be present is equal to the minimum percentage of all shares entitled to vote required to be present under section 10-19.1-76.
3. 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~~ Ballot pursuant to section 10-19.1-75.1; or

- d. ~~Electronic~~ Remote communication pursuant to section 10-19.1-75.2.

SECTION 17. AMENDMENT. Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, 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.
 - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
 - b. 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 no later than five days after the effective time of the action.
 - ~~b.~~ c. Failure to provide the notice does not invalidate the written action.
 - ~~c.~~ d. 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.

SECTION 18. AMENDMENT. Section 10-19.1-75.1 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75.1. ~~Action~~ Shareholder 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.
6. With respect to a ballot by electronic communication:
- a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-19.1-75.2 as if the ballot were a notice.
 - b. Consent by a shareholder to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 19. AMENDMENT. Subsection 7 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

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~~. However, 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.

SECTION 20. AMENDMENT. Subsections 2 and 3 of section 10-19.1-76.3 of the North Dakota Century Code are amended and reenacted as follows:

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 to~~ doubt about the validity of the signature on it or ~~about the signatory's authority~~ the signatory to sign for the shareholder.

SECTION 21. AMENDMENT. Subsections 4 and 10 of section 10-19.1-84 of the North Dakota Century Code are amended and reenacted as follows:

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:
 - a. The share register; and
 - b. All ~~documents~~ records referred to in subsection 2.
 10. Copies of the share register and all ~~documents~~ records referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

SECTION 22. 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~~ Unless otherwise provided in the articles, 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; or
 - (5) Eliminates the right to obtain payment under this subdivision;
 - b. A sale, lease, transfer, or other disposition of ~~all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in that requires shareholder approval under subsection 4 2 of section 10-19.1-104, or a~~ but not including:
 - (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109 ~~or a~~;
 - (2) A disposition pursuant to an order of a court; ~~or a~~
 - (3) 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 constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
 - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring corporation, except as provided in subsection 3; ~~or~~
 - e. A plan of conversion adopted by a corporation; or
 - f. 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:
 - a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
 - b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
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.
5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenters' rights.
6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
 - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, incorporated.
 - b. The applicability of subdivision a is determined as of:
 - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
 - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
 - c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the

terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

SECTION 23. AMENDMENT. Subsections 3 and 4 of section 10-19.1-88 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the shareholders, and the corporation calls a meeting of shareholders, then a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights shall file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and may not vote the shares in favor of the proposed action.
4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3, to all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-19.1-87, and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:
 - a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;
 - b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and
 - c. A copy of section 10-19.1-87 and this section.

SECTION 24. AMENDMENT. Subsection 1 of section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

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 governor, director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, 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.

SECTION 25. Section 10-19.1-102.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-102.1. Continuance of corporate authority. When an act or record 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 organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons is continued.

SECTION 26. AMENDMENT. Subsection 1 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign corporation or 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 jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
 - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic corporation or limited liability company, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.

SECTION 27. AMENDMENT. Subsection 2 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to shareholders approval:
 - a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or

substantially all of its property and assets, including its good will, 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 deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.

- (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
 - (2) 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 corporation.
- b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:
 - (1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and
 - (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.

SECTION 28. Section 10-19.1-104.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.1. Conversion.

1. An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization other than a general partnership as provided in this section and sections 10-19.1-104.2 through 10-19.1-104.6 and a plan of conversion, if:
 - a. The governing statute of the other organization authorizes the conversion;
 - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:

- a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:
- (1) At a meeting of the board as provided in section 10-19.1-43; or
 - (2) By a written action of the board as provided in section 10-19.1-47.
- b. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:
- (1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or
 - (2) By a written action of the shareholders as provided in section 10-19.1-75.
- c. "Certificate of creation" means:
- (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;
 - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
 - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
 - (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
 - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
- d. "Date of origin" means the date on which:
- (1) A corporation which is:
 - (a) The converting organization was incorporated; or
 - (b) The converted organization is deemed to be incorporated;
 - (2) A limited liability company which is:
 - (a) The converting organization was organized; or
 - (b) The converted organization is deemed to be organized;

- (3) A general partnership that is the converting organization was formed;
 - (4) A limited partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed;
 - (5) A limited liability partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed; and
 - (6) A limited liability limited partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed.
- e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. "General partnership" means an organization formed under chapters 45-13 through 45-21.
- g. "Organizational records" means for an organization which is:
 - (1) A corporation, its articles of incorporation and bylaws;
 - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
 - (3) A limited partnership, its partnership agreement;
 - (4) A limited liability partnership, its partnership agreement; or
 - (5) A limited liability limited partnership, its partnership agreement.
- h. "Originating records" means for an organization which is:
 - (1) A corporation, its articles of incorporation;
 - (2) A limited liability company, its articles of organization;
 - (3) A limited partnership, its certificate of limited partnership;
 - (4) A limited liability partnership, its registration; or
 - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

SECTION 29. Section 10-19.1-104.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.2. Plan of conversion. A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the proposed conversion;
4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

SECTION 30. Section 10-19.1-104.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.3. Plan approval and amendment.

1. If the converting organization is a corporation, then:
 - a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting corporation and must then be approved by an act of its shareholders.
 - (1) In the action by the shareholders, a class or series of shares is entitled to vote as a class or series on the approval or amendment of the plan.
 - (2) Any amendment of the plan is subject to any contractual rights.
 - b. If the resolution containing or amending the plan of conversion is approved by the shareholders:
 - (1) At a shareholder meeting, then:
 - (a) Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in section 10-19.1-73.
 - (b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.

- (c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.
 - (2) By a written action of the shareholders, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.
- 2. If the converting organization is not a corporation, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

SECTION 31. Section 10-19.1-104.4 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.4. Articles of conversion.

- 1. Upon receiving the approval required by section 10-19.1-104.3, articles of conversion must be prepared in a record that must contain:
 - a. A statement that the converting organization is being converted into another organization including:
 - (1) The name of the converting organization immediately before the filing of the articles of conversion;
 - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
 - (3) The form of organization that the converted organization will be; and
 - (4) The jurisdiction of the governing statute of the converted organization;
 - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-19.1-104.3;
 - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
 - d. The plan of conversion without organization records;
 - e. A copy of the originating record of the converted organization; and
 - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-19.1-104.6.
- 2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
 - a. If the converted organization is a domestic organization:

- (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
 - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
 - b. If the converted organization is a foreign organization:
 - (1) That is transacting business or conducting activities in this state, then:
 - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
 - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
 - (2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 32. Section 10-19.1-104.5 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.5. Abandonment of conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:
 - a. If the converting organization is a corporation, then:
 - (1) Before a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, it may be abandoned by an act of its board.

- (2) After a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, and before the effective date of the plan, it may be abandoned:
 - (a) If the shareholders of the converting corporation entitled to vote on the approval of the plan as provided in section 10-19.1-104.3 have approved the abandonment by an act of the shareholders; or
 - (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
 - b. If the converting organization is not a corporation, then the abandonment of the plan of conversion must comply with its governing statute.
 - 2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
 - a. The name of the converting organization;
 - b. The provision of this section under which the plan is abandoned; and
 - c. If the plan is abandoned:
 - (1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the shareholders under subparagraph b of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or
 - (2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 33. Section 10-19.1-104.6 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.6. Effective date of conversion - Effect.

- 1. A conversion is effective when the filing requirements of subsection 2 of section 10-19.1-104.4 have been fulfilled or on a later date specified in the articles of conversion.
- 2. With respect to the effect of conversion on the converting organization and on the converted organization:
 - a. An organization that has been converted as provided in sections 10-19.1-104.1 through 10-19.1-104.6 is for all purposes the same entity that existed before the conversion.

- b. Upon a conversion becoming effective:
- (1) If the converted organization:
 - (a) Is a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter; or
 - (b) Is not a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
 - (2) All property owned by the converting organization remains vested in the converted organization;
 - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
 - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion has not occurred;
 - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and
 - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-19.1-87.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

SECTION 34. AMENDMENT. Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, it must be given by:
 - 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

- b. Giving written notice to known creditors and claimants pursuant to subsection ~~32~~ 35 of section 10-19.1-01.

SECTION 35. AMENDMENT. Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-129. Service of process on corporation, foreign corporation, and nonresident directors.

1. The registered agent must be an agent of the corporation or foreign corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served.
 - a. 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, notice, or demand.
 - b. 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 or foreign corporation may be served ~~either upon:~~
 - a. On the registered agent of the corporation; ~~or upon;~~
 - b. On an officer of the corporation; or foreign corporation;
 - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or upon
 - d. On the secretary of state as provided in this section.
3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the ~~registered office~~ principal executive office if located in this state, then the secretary of state is ~~the~~ an agent of the corporation or foreign corporation upon whom the process, notice, or demand may be served.
 - a. Service on the secretary of state:
 - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;_
 - b- (2) Shall include the return of the sheriff, or the affidavit of a ~~person~~ an individual who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can

be found at the registered office; ~~and~~ or at the principal executive office.

- e. (3) Is deemed personal service upon the corporation and must be made by filing with the secretary of state:

(4) (a) Three copies of the process, notice, or demand; and

(2) (b) The fees provided in section 10-19.1-147.

(4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

- b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at the registered office or principal executive 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, then 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 10-19.1-146, then service may be made according to subsection 2.
5. ~~A~~ The secretary of state shall maintain a record of ~~all processes, notices every process, notice, and demands demand served upon on~~ 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~~ the process, notice, or demand.
6. ~~Nothing in this~~ This section limits ~~does not limit~~ 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.

SECTION 36. AMENDMENT. Subsection 1 of section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

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 record submitted by the foreign corporation pursuant to this chapter.

SECTION 37. AMENDMENT. Section 10-19.1-145 of the North Dakota Century Code is amended and reenacted 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 38. AMENDMENT. Subsections 1, 2, 4, and 6 of section 10-19.1-146 of the North Dakota Century Code are amended and reenacted as follows:

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time ~~prescribed by~~ provided in 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 the corporation or foreign corporation is incorporated.
 - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's 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 value of all the property owned by the corporation, wherever located, and the value of the

h. Any additional information necessary or appropriate 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 subdivision g 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~~ provided in subsection ~~48~~ 51 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 subdivision g of subsection 1 to any person, except a person ~~who~~ that 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.
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 state for correction, then the penalties

~~prescribed~~ provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.

6. ~~Within three~~ 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 is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation 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.

SECTION 39. AMENDMENT. Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-147. Fees for filing ~~documents~~ records - 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 articles of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
4. 7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. 8. Filing articles of abandonment of merger, fifty dollars.

- ~~6-~~ 9. Filing an application to reserve a corporate name, ten dollars.
- ~~7-~~ 10. Filing a notice of transfer of a reserved corporate name, ten dollars.
- ~~8-~~ 11. Filing a cancellation of reserved corporate name, ten dollars.
- ~~9-~~ 12. Filing a consent to use of name, ten dollars.
- ~~40-~~ 13. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
- ~~44-~~ 14. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
- ~~42-~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.
- ~~43-~~ 16. Filing a resignation as registered agent, ten dollars.
- ~~44-~~ 17. Filing a statement of the establishment of a series of shares, twenty dollars.
- ~~45-~~ 18. Filing a statement of cancellation of shares, twenty dollars.
- ~~46-~~ 19. Filing a statement of reduction of stated capital, twenty dollars.
- ~~47-~~ 20. Filing a statement of intent to dissolve, ten dollars.
- ~~48-~~ 21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~49-~~ 22. Filing articles of dissolution, twenty dollars.
- ~~20-~~ 23. 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.
- ~~24-~~ 24. 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-~~ 25. 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-~~ 26. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~24-~~ 27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
 - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - ~~a-~~ (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;

- ~~b.~~ (2) Thereafter, sixty dollars; and
- ~~e.~~ (3) 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.

b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.

~~25.~~ 28. Filing any process, notice, or demand for service, twenty-five dollars.

~~26.~~ 29. Furnishing a certified copy of any ~~document~~ record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.

~~27.~~ 30. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, 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.

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 record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the document record 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 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 record required by this chapter to be approved by the secretary of state before the document record may be filed, then the secretary of state shall give written notice of the rejection to the person who that delivered the document record, specifying the reasons for rejection.
 - a. From such rejection the person Within thirty days after the service of the notice of denial, the corporation or foreign corporation, as the

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 10-19.1-147, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
 - a. If a record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
 - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 42. Section 10-19.1-148.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-148.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the corporation that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and

tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 45. AMENDMENT. Section 10-19.1-150 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state. 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~~ records 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~~ records, unless otherwise specifically required by law, is not mandatory.

SECTION 46. 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 ~~persons~~ individuals 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 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 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 47. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring organization" means the ~~foreign or domestic~~ limited liability company or foreign limited liability company, or ~~domestic~~ corporation or foreign corporation that acquires in an exchange the shares of a ~~domestic or foreign~~ corporation or foreign corporation the membership interests of a limited liability company.
2. "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 all other cases, the mailing address, including a zip code.
3. "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, articles of conversion, and articles of termination.

- b. In the case of a foreign limited liability company, the term includes all ~~documents~~ records 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.

4. "Authenticated electronic communication" means:

- a. That the electronic communication is delivered:

- (1) To the principal place of business of the limited liability company; or
- (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and

- b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.

5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.

6. "Board" or "board of governors" means the board of governors of a limited liability company.

~~6.~~ 7. "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.~~ 8. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:

- a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
- b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board or the members.

~~8.~~ 9. "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.~~ 10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

- ~~40-~~ 11. "Constituent organization" means a limited liability company or a domestic or foreign corporation that:
- In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
 - In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
- ~~44-~~ 12. "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 member contributes to a limited liability company in the capacity of that member as a member.
- ~~42-~~ 13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
- The person agrees to make a contribution in the future; and
 - 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.
- ~~43-~~ 14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
- The person has the right, but not the obligation, to make a contribution in the future; and
 - 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.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
- ~~44-~~ 18. "Dissolution" means that the limited liability company 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 the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.
- ~~45-~~ 19. "Dissolution avoidance consent" means the consent of all remaining members:
- 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.

~~46-~~ 20. "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 the limited liability company's 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.

~~47-~~ 21. "~~Domestic corporation~~" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by ~~chapter 40-49.4.~~

~~48-~~ 21. "Domestic organization" means an organization created under the laws of this state.

~~49-~~ 22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~20-~~ 23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
- b. That may be directly reproduced in paper form by the recipient through an automated process.

~~24-~~ 24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~22-~~ 25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~23-~~ 26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.

- b. That the secretary of state ~~shall~~ did then:

- (1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and

- (2) Record the ~~document~~ record in the office of the secretary of state.

~~24.~~ 27. "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.

~~25.~~ 28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

~~26.~~ 29. "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 for which a limited liability company may be organized under this chapter.

~~27.~~ 30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~28.~~ 31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~29.~~ 32. "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.

~~30.~~ 33. "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.

34. "Governing statute" of an organization means:

- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

- (1) If a corporation, then chapter 10-19.1;
- (2) If a limited liability company, then this chapter;
- (3) If a general partnership, then chapters 45-13 through 45-21;
- (4) If a limited partnership, then chapter 45-10.2;
- (5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.

~~34.~~ 35. "Governor" means an individual serving on the board.

~~32.~~ 36. "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:

- 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.

~~33.~~ ~~"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.~~

~~34.~~ 37. "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; and a receiver, guardian, custodian, or conservator.

~~35.~~ 38. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

~~36.~~ 39. "Manager" means:

- 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; and
- b. An individual considered elected as a manager pursuant to section 10-32-92.

~~37.~~ 40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

~~38.~~ 41. "Membership interest" means one of the units, however designated, into which a member's proprietary interest in a limited liability company is divided consisting of:

- a. A member's financial rights;
- b. A member's right to assign financial rights as provided in section 10-32-31;

- c. A member's governance rights, if any; and
- d. A member's right to assign any governance rights owned as provided in section 10-32-32.

~~39.~~ 42. "Notice":

- a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:
 - (1) 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.
 - (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
 - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
 - (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
- b. Is given, in all other cases:
 - (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;
 - (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; or
- (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.
- (5) When the method is fair and reasonable when all of the circumstances are considered.
 - c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.

~~40-~~ 43. "Organization" means:

- a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity~~ or any other person having a governing statute; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

~~41-~~ 44. "Owners" means:

- a. Members in the case of a limited liability company or a nonprofit corporation; and
- b. Shareholders in the case of a corporation.

- 42- 45. "Ownership interests" means:
- Membership interests in the case of a limited liability company or a nonprofit corporation; and
 - Shares in the case of a corporation.
- 43- 46. "Parent" of a specified limited liability company means a limited liability company ~~or, a foreign limited liability company, a corporation, or a foreign corporation~~ that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.
- 44- 47. "Pertains" means a contribution "pertains":
- To a particular series when the contribution is made in return for a membership interest in that particular series.
 - 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.
- 45- 48. "Principal executive office" means:
- 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
 - If the limited liability company has no elected or appointed president, the registered office of the limited liability company.
- 46- 49. "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.
- 47- 50. "Registered office" means the place in this state designated in ~~the~~ a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office ~~of the limited liability company~~.
- 48- 51. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
 - 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.

~~49.~~ 52. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~50.~~ 53. "Required records" are those records required to be maintained under section 10-32-51.

~~51.~~ 54. "Security" has the meaning given in section 10-04-02.

~~52.~~ 55. "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.

~~53.~~ 56. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09.
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:
 - (1) The ~~document~~ record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
 - (2) The signature and the ~~document~~ record are communicated by a method or medium acceptable by the secretary of state.

~~54.~~ 57. "Subsidiary" of a specified limited liability company means:

- a. A limited liability company or a foreign 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 organizations by the specified limited liability company; or
- b. A domestic corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company.

- ~~55-~~ 58. "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.
- ~~56-~~ 59. "Surviving organization" means the ~~foreign~~ limited liability company or ~~domestic~~ foreign limited liability company or domestic or foreign corporation resulting from a merger which:
- a. May preexist the merger; or
 - b. May be created by the merger.
- ~~57-~~ 60. "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. 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.
- ~~58-~~ 61. "Vote" includes authorization by written action.
- ~~59-~~ 62. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.
- ~~60-~~ 63. "Written action" means:
- a. A written ~~document~~ record signed by every person required to take the action described; and
 - b. The counterparts of a written ~~document~~ record signed by any person taking the action described.
 - (1) Each counterpart constitutes the action of the persons signing it; and
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 48. Section 10-32-02.2 of the North Dakota Century Code is created and enacted as follows:

10-32-02.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:

- a. Knows of the fact;
 - b. Has received notice of the fact as provided in subsection 42 of section 10-32-02;
 - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
 - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
- a. The intention of a limited liability company to dissolve, ninety days after the effective date of the filed notice of dissolution;
 - b. The dissolution of a limited liability company, ninety days after the effective date of the filed articles of dissolution;
 - c. The conversion of a limited liability company, ninety days after the effective date of the filed articles of conversion; or
 - d. The merger of the limited liability company, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 42 of section 10-32-03, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 42 of section 10-32-02.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 42 of section 10-32-02, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
- a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
 - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a manager or governor is effective immediately as knowledge of, notice to, or receipt of a notification by the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of the manager or

governor. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a member who is not a manager or governor is not effective as knowledge by, notice to, or receipt of a notification by the limited liability company.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a limited liability company unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:

 - a. Consent by a manager or governor to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the manager or governor. However, no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
 - b. An affidavit of a manager or governor or authorized agent of the limited liability company that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 49. AMENDMENT. Subsections 2 and 4 of section 10-32-07 of the North Dakota Century Code are amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control 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 bylaws is vested in the board as provided in subsection 2 of 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 the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
 - f. A written action by the board 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 as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The value of previous contributions must be restated when a new contribution is accepted 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 as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except ~~if~~ when this chapter requires the affirmative vote of ~~a~~;
 - (1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or
 - (2) A majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;
- 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 10-32-40.1;
- 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;
 - t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
 - u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
 - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
- a. The persons to serve as the first board 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 date, time, and place of board 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 action as provided in section 10-32-83;
 - h. Authority to sign and deliver certain ~~documents~~ records 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 10-32-88;
 - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 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 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 10-32-40.1;
- 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 the limited liability company's 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.

⁷⁶ **SECTION 50. 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", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
 - e. d. May not contain a word or phrase that indicates or implies that ~~it is~~ the limited liability company:
- (1) Is organized for a purpose other than a legal:

⁷⁶ Section 10-32-10 was also amended by section 3 of House Bill No. 1273, chapter 384.

- (a) A lawful business purpose for which a limited liability company may be organized under this chapter; ~~and~~ or
 - (b) For a purpose stated in its articles of organization; or
 - (2) May not be organized under this chapter; and
- f. 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~~ record which complies with subsection 3, of:
 - (a) Another limited liability company;
 - (b) A corporation;
 - (c) A limited partnership;
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
 - (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~~ 45-10.2-11, 45-13-04.2, 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 July 1, 1993, or a foreign limited liability company authorized to do business in this state on July 1, 1993, 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, and 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.
5. A limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
 - a. Was organized, incorporated, 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~~ 45-10.2-11, 45-13-04.2, 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.
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. 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;

- a. By refiling the articles of organization pursuant to section 10-32-07;
 - b. By amending pursuant to section 10-32-18; or
 - c. By reinstating pursuant to section 10-32-149.
8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state or applying for a certificate of authority.

SECTION 51. AMENDMENT. Subsection 2 of section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A limited liability company shall 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 52. AMENDMENT. Subsection 4 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

4. The fee ~~prescribed~~ provided in section 10-32-150 for change of address of registered office must be refunded when the secretary of state determines a change of address of registered office results from rezoning or postal reassignment.

SECTION 53. 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 to the articles of organization, 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, or effect a combination of outstanding membership interests of a class or series into a lesser number of membership interests of the class or series where each other class or series is not subject to a similar combination;
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 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- 5. 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 to do so;
- 7- 6. Limit or deny any existing preemptive rights of the membership interests of the class or series; or
- 8- 7. Cancel or otherwise affect distributions on the membership interests of the class or series.

SECTION 54. AMENDMENT. Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

10-32-20. Filing of 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 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. A limited liability company that amends its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment.

SECTION 55. AMENDMENT. Section 10-32-24 of the North Dakota Century Code is amended and reenacted as follows:

10-32-24. Limited liability company seal. A limited liability company may have a limited liability company seal. The use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a document record or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a document record is not necessary.

SECTION 56. 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 Unless this chapter or the articles or a member-control agreement require a larger proportion or voting by class and except for the election of governors which is governed by section 10-32-76, the members shall take action by the affirmative vote of the owners of the greater of a:
 - a. A majority of the voting power of the membership interests present and entitled to vote on that item of business; or a

- b. 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, except if this chapter, the articles of organization, or a member-control agreement require a larger proportion.

If the articles or a member-control agreement require a larger proportion than is required by this chapter for a particular action, then the articles or member-control agreement control.

2. In any case when a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control 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, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.
3. Unless otherwise provided in the articles of organization, a member-control agreement, or the bylaws, members may take action at a meeting by ~~voice~~:
 - a. Voice or ballot, ~~action~~;
 - b. Action without a meeting pursuant to section 10-32-43, ~~written ballot~~;
 - c. Ballot pursuant to section 10-32-43.1; ~~or by electronic~~
 - d. Remote communication pursuant to section 10-32-43.2.

SECTION 57. AMENDMENT. Subsection 1 of section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, 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. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.

SECTION 58. AMENDMENT. Section 10-32-43.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43.1. Action Member action by written ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or the bylaws, 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 the bylaws, a written ballot may not be revoked.
6. With respect to a ballot by electronic communication:
 - a. A limited liability company may deliver a ballot by electronic communication only if the limited liability company complies with subsection 4 of section 10-32-43.2 as if the ballot were a notice.
 - b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 59. AMENDMENT. Subsection 2 of section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

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~~ records referred to in subsection 1.

SECTION 60. 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 limited liability company 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~~ that was a member at such time.

1. In any action thereafter instituted in the right of any domestic limited liability company 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 limited liability company 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 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 61. 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~~ Unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member-control agreement, which 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; ~~or~~
 - (6) Establishes or changes the conditions for or consequences of expulsion; or
 - (7) Eliminates the right to obtain payment under this subdivision;
- b. A sale, lease, transfer, or other disposition of ~~all or substantially all of the~~ property and assets of the limited liability company, ~~but not including a transaction permitted without that requires~~ member approval under subsection 2 of section 10-32-108, a but not including:
- (1) A disposition in dissolution described in subsection 4 of section 10-32-113; a;
 - (2) A disposition pursuant to an order of a court; or a
 - (3) 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 the member's respective membership interests within one year after the date of disposition;
- c. A plan of merger to which the limited liability company is a constituent organization;
- d. A plan of exchange to which the limited liability company is a constituent organization 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; ~~or~~
- e. A plan of conversion adopted by the limited liability company; or
- f. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board directs that dissenting members may obtain payment for the dissenting members' membership interests.

2. A member may not assert dissenters' rights as to less than all the membership interests registered in the name of the member, unless the member dissents with respect to all the membership interests that are beneficially owned by another person but registered in the name of the member and discloses the name and address of each beneficial owner on which behalf the member dissents. In that event, the rights of the dissenter must be determined as if the membership interests to which the member has dissented and the other membership interests were registered in the names of different members. The beneficial owner of membership interests who is not the member may assert dissenters' rights with respect to membership interests held on behalf of the beneficial owner, and must be treated as a dissenting member under the terms of this section and section 10-32-55, if the beneficial owner submits to the limited liability company at the time of or before the assertion of the rights a written consent of the member.
3. Unless the articles, the bylaws, a member-control agreement, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the members of:
 - a. The surviving limited liability company in a merger with respect to membership interests of the members are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
 - b. The limited liability company whose membership interests will be acquired by the acquiring limited liability company in a plan of exchange with respect to membership interests of the members that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. 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.
- ~~3.~~ 5. If a date is fixed according to subsection 1 of section 10-32-40.1 for the determination of members entitled to receive notice of and to vote on an action described in subsection 1, only members as of the date fixed may exercise dissenters' rights.

SECTION 62. AMENDMENT. Subsections 3 and 4 of section 10-32-55 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the members and the limited liability company calls a meeting of members, then a member who is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights shall 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 may not vote the membership interests in favor of the proposed action.

4. After the proposed action is approved by the board and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3, and all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-32-54 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 and this section.

SECTION 63. 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 or a member-control agreement and only when authorized by the board or pursuant to a member-control agreement, 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. Subject to subsection 3, a person may make a contribution to a limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
 - a. The board 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 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 a member-control agreement or the articles of organization establish, or authorize the board to establish, more than one class or series within classes;
- b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board unless and to the extent the articles of organization or a member-control agreement fixes 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 or a member-control agreement, 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, in a member-control agreement, or by resolution of the board.

~~7.~~ a. A statement signed 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 or a member-control agreement.

b. 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.~~ 7. 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;
- 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 64. AMENDMENT. Section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

10-32-76. ~~Cumulative voting~~ Voting for governors and cumulative voting.

1. Unless otherwise provided in the articles and subject to subsection 2, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.
2. Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:
 - a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and
 - b. Each member shall cumulate that member's voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.
- ~~2-~~ 3. An amendment to the articles, a member-control agreement, or the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board under cumulative voting are cast against the amendment.

SECTION 65. AMENDMENT. Subsections 3 and 5 of section 10-32-80 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles of organization, a member-control agreement, or the bylaws 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.

- a. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.
 - b. Any notice to a governor given under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given.
 - c. Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication.
 - (1) Any consent so given may be relied upon until revoked by the governor.
 - (2) However, no revocation affects the validity of any notice given before receipt of revocation of the consent.
5. A governor may waive notice of a meeting of the board. 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, by authenticated electronic communication, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except when 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 66. 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 individual. If a document record must be signed by individuals holding different positions or functions and an individual holds or exercises more than one of those positions or functions, that individual may sign the document record in more than one capacity, but only if the document record indicates each capacity in which the individual signs.

SECTION 67. AMENDMENT. Subsection 1 of section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

- 1. For purposes of this section:
 - a. "Limited liability company" includes a domestic limited liability company 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, 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, employee, or agent whose indemnification is in issue.

SECTION 68. AMENDMENT. Subsections 1 and 2 of section 10-32-100 of the North Dakota Century Code are amended and reenacted as follows:

- 1. With or without a business purpose, a limited liability company may merge:
 - a. With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
 - b. With a ~~domestic~~ corporation under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
 - c. 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 pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

- b. A limited liability company may acquire all of the ownership interests of one or more classes or series of a ~~domestic~~ corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
- c. 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 and in chapter 10-19.1.
- d. 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.

SECTION 69. AMENDMENT. Subsections 1 and 5 of section 10-32-102 of the North Dakota Century Code are amended and reenacted as follows:

- 1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization 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. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, 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 10-19.1-73 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.
- 5. If the merger or exchange is with a ~~domestic~~ corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 10-19.1.

SECTION 70. AMENDMENT. Subsection 2 of section 10-32-106 of the North Dakota Century Code is amended and reenacted as follows:

- 2. When a merger becomes effective:
 - a. The constituent organizations become a single entity, the surviving corporation, or surviving limited liability company;

- 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.

SECTION 71. Section 10-32-106.1 of the North Dakota Century Code is created and enacted as follows:

10-32-106.1. Continuance of limited liability company authority. When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single limited liability company, the persons with authority to do so under the articles or bylaws of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons are continued.

SECTION 72. AMENDMENT. Subsections 1 and 4 of section 10-32-107 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may merge with including a merger pursuant to section 10-32-104, 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 jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized; and
 - b. With respect to an exchange, the constituent organization of which the ownership interests will be acquired is a limited liability company or a ~~domestic~~ corporation, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
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, the surviving organization shall comply, as the case may be, with the provisions of chapter 10-19.1 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 the surviving organization 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 the surviving organization's agent to accept service of process in any

proceeding, and an address to which process may be forwarded; and

- c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent ~~domestic~~ limited liability company and constituent ~~domestic~~ corporation the amount, if any, to which the dissenting owners are entitled under section 10-19.1-88 or 10-32-55.

SECTION 73. AMENDMENT. Subsection 2 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to member approval:

- a. 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 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.

(1) Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting.

(2) 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.

- b. Member approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. The limited liability company will conclusively be deemed to have retained a significant continuing business activity if the limited liability company retains a business activity that represented at least:

(1) Twenty-five percent of the limited liability company's total assets at the end of the most recently completed fiscal year; and

(2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for paragraph 1 and this paragraph.

SECTION 74. Section 10-32-108.1 of the North Dakota Century Code is created and enacted as follows:

10-32-108.1. Conversion.

1. An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization other than a general partnership as provided in this section and sections 10-32-108.2 through 10-32-108.6 and a plan of conversion, if:
 - a. The governing statute of the other organization authorizes the conversion;
 - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 10-32-108.1 through 10-32-108.6, unless the context otherwise requires:
 - a. "Act of the board" means action by the board as provided in section 10-32-83 whether:
 - (1) At a meeting of the board as provided in section 10-32-80; or
 - (2) By a written action of the board as provided in section 10-32-84.
 - b. "Act of the members" means action by the members as provided in section 10-32-42 whether:
 - (1) At a meeting of the members as provided in sections 10-32-38 and 10-32-39; or
 - (2) By a written action of the members as provided in section 10-32-43.
 - c. "Certificate of creation" means:
 - (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
 - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under this chapter;
 - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
 - (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
 - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

- d. "Date of origin" means the date on which:
- (1) A corporation which is:
 - (a) The converting organization was incorporated; or
 - (b) The converted organization is deemed to be incorporated;
 - (2) A limited liability company which is:
 - (a) The converting organization was organized; or
 - (b) The converted organization is deemed to be organized;
 - (3) A general partnership that is the converting organization was formed;
 - (4) A limited partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed;
 - (5) A limited liability partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed; and
 - (6) A limited liability limited partnership which is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed.
- e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.
- g. "Organizational records" means for an organization that is:
- (1) A corporation, its articles of incorporation and bylaws;
 - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
 - (3) A limited partnership, its partnership agreement;
 - (4) A limited liability partnership, its partnership agreement; or

- (5) A limited liability limited partnership, its partnership agreement.
- h. "Originating records" means for an organization which is:
 - (1) A corporation, its articles of incorporation;
 - (2) A limited liability company, its articles of organization;
 - (3) A limited partnership, its certificate of limited partnership;
 - (4) A limited liability partnership, its registration; or
 - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

SECTION 75. Section 10-32-108.2 of the North Dakota Century Code is created and enacted as follows:

10-32-108.2. Plan of conversion. A plan of conversion must be in a record and must contain:

- 1. The name and form of the converting organization before conversion;
- 2. The name and form of the converted organization after conversion;
- 3. The terms and conditions of the proposed conversion;
- 4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
- 5. The organizational records of the converted organization; and
- 6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

SECTION 76. Section 10-32-108.3 of the North Dakota Century Code is created and enacted as follows:

10-32-108.3. Plan approval and amendment.

- 1. If the converting organization is a limited liability company, then:
 - a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting limited liability company and must then be approved by an act of its members.
 - (1) In the action by the members, a class or series of membership interests is entitled to vote as a class or series on the approval or amendment of the plan.
 - (2) Any amendment of the plan is subject to any contractual rights.

- d. The plan of conversion without organizational records;
 - e. A copy of the originating record of the converted organization; and
 - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-32-108.6.
 - 2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
 - a. If the converted organization is a domestic organization:
 - (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
 - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
 - b. If the converted organization is a foreign organization:
 - (1) That is transacting business or conducting activities in this state, then:
 - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
 - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
 - (2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
- 3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 78. Section 10-32-108.5 of the North Dakota Century Code is created and enacted as follows:

10-32-108.5. Abandonment of conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:
 - a. If the converting organization is a limited liability company, then:
 - (1) Before a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, it may be abandoned by an act of its board.
 - (2) After a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, and before the effective date of the plan, it may be abandoned:
 - (a) If the members of the converting limited liability company entitled to vote on the approval of the plan as provided in section 10-32-108.3 have approved the abandonment by an act of the members; or
 - (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
 - b. If the converting organization is not a limited liability company, then the abandonment of the plan of conversion must comply with its governing statute.
2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
 - a. The name of the converting organization;
 - b. The provision of this section under which the plan is abandoned; and
 - c. If the plan is abandoned:
 - (1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the members under subparagraph a of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or
 - (2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 79. Section 10-32-108.6 of the North Dakota Century Code is created and enacted as follows:

10-32-108.6. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 10-32-108.4 have been fulfilled or on a later date specified in the articles of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:
 - a. An organization that has been converted as provided in sections 10-32-108.1 through 10-32-108.6 is for all purposes the same entity that existed before the conversion.
 - b. Upon a conversion becoming effective:
 - (1) If the converted organization:
 - (a) Is a limited liability company, then the converted organization 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; or
 - (b) Is not a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
 - (2) All property owned by the converting organization remains vested in the converted organization;
 - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
 - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
 - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and
 - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-32-54.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the

converting limited liability company was subject to suit in this state on the obligation.

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

SECTION 80. AMENDMENT. Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, the notice 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 ~~39~~ 42 of section 10-32-02.

SECTION 81. AMENDMENT. Section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

10-32-132. Service of process on limited liability company, foreign limited liability company, and nonresident governors.

1. The registered agent must be an agent of the limited liability company or foreign limited liability company and any nonresident governor upon whom any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served.
 - a. When a foreign limited liability company transacts business with a certificate of authority, or 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.
 - b. Acceptance of a governorship 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 limited liability company or foreign limited liability company may be served ~~either:~~
 - a. ~~Upon~~ On the registered agent of the limited liability company or foreign limited liability company;
 - b. ~~Upon~~ On a manager of the limited liability company or foreign limited liability company; ~~or~~
 - c. ~~Upon~~ On any responsible person found at the registered office or at the principal executive office if located in this state; or
 - d. On the secretary of state as provided in this section.

3. If neither the ~~limited liability company's~~ registered agent nor ~~an officer of the limited liability company~~ a responsible person can be found at the registered office or the principal executive office if located in this state, or if a limited liability company or foreign limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the an agent of the limited liability company or foreign limited liability company upon whom the process, notice, or demand may be served.

a. Service on the secretary of state:

- a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
- b- (2) Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that neither the registered agent nor a ~~manager~~ responsible person can be found at the registered office or at the principal executive office; and
- e- (3) Is deemed personal service upon the limited liability company or foreign limited liability company and is must be made by filing with the secretary of state:
- (1) (a) Three copies of the process, notice, or demand; and
- (2) (b) The fees provided for in section 10-32-150; and
- (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
- b. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office or principal executive 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 limited liability company as provided in this subsection. The court shall determine if service is proper. If a limited liability company 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 10-32-128. If a limited liability company has been involuntarily dissolved pursuant to section 10-32-149, then service may be made according to subsection 2.

5. A The secretary of state shall maintain a record ~~must be maintained in the office of the secretary of state of all processes, notices every process, notice, and demands~~ demand served upon the secretary of state under this section, including the date of service and the action taken with reference to it the process, notice, or demand.

- 5- 6. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a

limited liability company or foreign limited liability company in any other manner permitted by law.

SECTION 82. AMENDMENT. Subsection 1 of section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

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 record submitted by the foreign limited liability company pursuant to this chapter.

SECTION 83. 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 84. AMENDMENT. Subsections 1, 2, 3, 4, and 7 of section 10-32-149 of the North Dakota Century Code are amended and reenacted as follows:

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided 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 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~~ provided in subsection ~~53~~ 56 of section 10-32-02, the articles, the bylaws, 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, the annual report 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 any annual report provided for in this section after the annual report is 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~~ provided 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 limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.
4. 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 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~~ provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
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 reinstatement fee as ~~prescribed~~ provided in section 10-32-150. 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 termination or revocation to the reinstatement.

SECTION 85. 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.

4. The secretary of state shall charge and collect for:
 - a. 1. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.
 - b. 2. Filing articles of amendment, fifty dollars.
 3. Filing articles of correction, fifty dollars.
 - e. 4. Filing restated articles of organization, one hundred twenty-five dollars.
 5. Filing articles of conversion of a limited liability company, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
 6. Filing abandonment of conversion, fifty dollars.
 - e. 7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
 - e. 8. Filing abandonment of merger or exchange, fifty dollars.
 - f. 9. Filing an application to reserve a name, ten dollars.
 - g. 10. Filing a notice of transfer of a reserved name, ten dollars.

- ~~h.~~ 11. Filing a cancellation of reserved name, ten dollars.
- ~~i.~~ 12. Filing a consent to use of name, ten dollars.
- ~~j.~~ 13. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
- ~~k.~~ 14. 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.~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.
- ~~m.~~ 16. Filing a resignation as registered agent, ten dollars.
- ~~n.~~ 17. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.
- ~~o.~~ 18. Filing a notice of dissolution, ten dollars.
- ~~p.~~ 19. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~q.~~ 20. Filing articles of dissolution and termination, twenty dollars.
- ~~r.~~ 21. 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.~~ 22. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
- ~~t.~~ 23. 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, fifty dollars.
- 24. Filing a certified statement of conversion of foreign limited liability company, fifty dollars.
- ~~u.~~ 25. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
- ~~v.~~ 26. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
 - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - (1) After the date ~~prescribed~~ provided 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.

- ~~b.~~ Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
- ~~w.~~ 27. Filing any process, notice, or demand for service, twenty-five dollars.
- ~~x.~~ 28. Submitting any ~~document~~ record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.
- ~~y.~~ 29. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
- ~~z.~~ The secretary of state shall charge and collect for:
- ~~a.~~ 30. Furnishing a copy of any ~~document, instrument~~ record, or paper relating to a limited liability company or a foreign limited liability company, ~~one~~:
- a. One dollar for every four pages, or fraction thereof; and
- b. Five dollars for a search of records.
- ~~b.~~ A certificate certifying a copy of reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.
31. Furnishing a certificate of good standing, existence, or authorization:
- a. Fifteen dollars; and
- b. Five dollars for a search of records.
- ~~e.~~ 32. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

SECTION 86. 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~~ record to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such ~~document~~ record 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~~ record required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall give written notice of the rejection to the person ~~who~~ that delivered the ~~document~~ record, specifying the reasons for rejection.
- a. ~~From such rejection such person~~ Within thirty days after the service of the notice of denial, the limited liability company or foreign limited liability company, as the case may be, 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 in the judicial district serving Burleigh County by filing with the clerk of such court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record 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 dissolves a limited liability company or 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 then the limited liability company or 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 in the judicial district serving Burleigh County by filing with the clerk of such court a petition setting forth a including:
 - a. A copy of ~~its~~ the limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or
 - b. A copy of the foreign limited liability company'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 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. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:
 - a. File all past-due annual reports;
 - b. Pay the fees to the secretary of state for each annual report as provided in subsection 26 of section 10-32-150; and
 - c. Pay the reinstatement fee to the secretary of state as provided in subsection 26 of section 10-32-150.
6. 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 87. Section 10-32-152.1 of the North Dakota Century Code is created and enacted as follows:

10-32-152.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing.

That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-32-150, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
 - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
 - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 88. Section 10-32-152.2 of the North Dakota Century Code is created and enacted as follows:

10-32-152.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the limited liability company that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and
 - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
 - b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
 - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
 - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
 - (1) On the date the statement of correction was filed:
 - (a) As to persons adversely affected by the correction; and
 - (b) For the purposes of subsection 3 of section 10-32-02.2; and
 - (2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 89. 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~~ records 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~~ records 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 90. AMENDMENT. Section 10-32-153.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 91. AMENDMENT. Section 10-32-154 of the North Dakota Century Code is amended and reenacted as follows:

10-32-154. 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~~ records 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~~ forms, unless otherwise specifically required by law, is not mandatory.

SECTION 92. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

10-33-01. Definitions. For the purposes of this chapter, unless the context otherwise requires:

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
2. "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.
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 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~~ records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of activity of the corporation; or
 - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.

- ~~6.~~ 6. "Board" means the board of directors of a corporation.
- ~~6.~~ 7. "Board member" means an individual serving on the board.
- ~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
- ~~8.~~ 9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
- ~~9.~~ 10. "Director" means a member of the board.
- ~~40.~~ 11. "Domestic organization" means an organization created under the laws of this state.
- ~~44.~~ 12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~42.~~ 13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
- ~~43.~~ 14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~44.~~ 15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- ~~45.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law:
 - b. That the secretary of state ~~shall~~ did then:
 - (1) Record the actual date on which the ~~document~~ record was filed, and if different, the effective date of filing; and
 - (2) Record the ~~document~~ record in the office of the secretary of state.
- ~~46.~~ 17. "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.

- 47- 18. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
- 48- 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 49- 20. "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.
- 20- 21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
- 21- ~~"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.~~
22. "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.
23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
25. "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.
26. "Notice":
- a. Is given by a member of a corporation to the corporation or an officer of the corporation:
 - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:

- (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) ~~If by posting~~ Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) ~~If by any~~ Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. Is given, in all other cases:
 - (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;
 - (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 there; ~~or~~
 - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice; ~~;~~
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; or
 - (c) ~~If by posting~~ Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or

[2] The giving of the separate notice; or

(5) When the method is fair and reasonable when all of the circumstances are considered.

- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
27. "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.
28. "Organization" means:
- a. Whether domestic or foreign, 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; limited liability limited partnership; joint venture; association; business trust; estate; trust; enterprise; or any other legal or commercial entity person having a governing statute; but
 - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction.
29. "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.
30. "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.
31. "Registered office" means the place in this state designated in the a corporation's articles of incorporation or in a corporation foreign corporation's certificate of authority 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.
33. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
34. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document record, is placed on a document record, as provided under section 41-01-09; and
 - b. With respect to a document record required by this chapter to be filed with the secretary of state, that:
 - (1) The document record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and
 - (2) The signature and the document record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Subsidiary" of a specified corporation means:
- a. A corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations, by the specified corporation; or
 - b. A limited liability company or a foreign 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 organizations, by the specified limited liability company.
36. "Surviving corporation" means the domestic corporation or foreign corporation resulting from a merger which:
- a. May preexist the merger; or

- b. May be created by the merger.
- 37. "Vote" includes authorization by written action.
- 38. "Written action" means:
 - a. A written ~~document~~ record signed by all of the persons required to take the action; or
 - b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action.
 - (1) Each counterpart constitutes the action of the persons signing it; and
 - (2) All the counterparts are one written action by all of the persons signing them.

SECTION 93. Section 10-33-01.2 of the North Dakota Century Code is created and enacted as follows:

10-33-01.2. Knowledge and notice.

- 1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
- 2. A person has notice of a fact if the person:
 - a. Knows of the fact;
 - b. Has received notice of the fact as provided in subsection 18 of section 10-33-01;
 - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
 - d. Has notice of it under subsection 3.
- 3. Subject to subsection 8, a person has notice of:
 - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve stating that the corporation intends to dissolve;
 - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution; and
 - c. A merger under sections 10-33-86 through 10-33-92, ninety days after the effective date of the filed articles of merger.
- 4. A person notifies or gives a notification to another person by taking the steps provided in subsection 18 of section 10-33-01, whether or not the other person learns of it.

5. A person receives a notification as provided in subsection 18 of section 10-33-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 18 of section 10-33-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
 - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
 - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a member who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
 - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
 - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 94. AMENDMENT. Subsection 3 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

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; and
 - g. A written action by the members must be signed by all members as provided in section 10-33-73.

⁷⁷ **SECTION 95. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

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 the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. d. May not contain a word or phrase that indicates or implies that ~~it is~~ the corporation:
 - (1) Is incorporated for a purpose other than ~~a legal~~;

⁷⁷ Section 10-33-10 was also amended by section 4 of House Bill No. 1273, chapter 384.

- (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
 - (b) For a purpose stated in its articles; or
 - (2) May not be incorporated under this chapter.
- f. e. Unless a document in compliance with subsection 2 is filed with the articles, may May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, 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;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited 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~~ 45-10.2-11, 45-13-04.2, 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 August 1, 1997, 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.

3. 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.
4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
- ~~4.~~ 5. 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, or 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.~~ 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

 - a. Was incorporated, organized, formed, or registered under the laws of this state-;
 - b. Is authorized to conduct activities or transact business 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~~ 45-10.2-11, 45-13-04.2, 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.
- ~~6.~~ 7. 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 conducting activities 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.~~ 8. ~~If a corporation's~~ A corporation whose period of existence has expired or ~~that~~ 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 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 must adopt a new corporate name that complies with the provisions of this section:

- a. By refiling articles of incorporation pursuant to section 10-33-08;
- b. By amending pursuant to section 10-33-14; or
- c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

SECTION 96. AMENDMENT. Subsection 2 of section 10-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, ~~a domestic~~ another corporation whether incorporated under this chapter or under another ~~provision~~ chapter 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.

SECTION 97. AMENDMENT. Subsection 4 of section 10-33-13 of the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:
- a. The fee ~~prescribed~~ provided in section 10-33-140 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
 - b. The fees ~~prescribed~~ provided in section 10-33-140 for change of registered agent, change of registered office, and consent of

registered agent do not apply if the registered agent or registered office is established or changed in the annual report.

SECTION 98. AMENDMENT. Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

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. A corporation that amends the corporate name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

SECTION 99. AMENDMENT. Section 10-33-22 of the North Dakota Century Code is amended and reenacted as follows:

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 record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document record is not necessary.

SECTION 100. AMENDMENT. Section 10-33-34 of the North Dakota Century Code is amended and reenacted as follows:

10-33-34. Cumulative voting for directors. Unless the articles provide otherwise or except as provided in ~~section 4 of~~ article XII of the Constitution of North Dakota, there is no cumulative voting.

SECTION 101. AMENDMENT. Subsections 3 and 5 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

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.
 - a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
 - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
 - c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the

validity of any notice given before receipt of revocation of the consent.

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, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when 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.

SECTION 102. AMENDMENT. Section 10-33-47 of the North Dakota Century Code is amended and reenacted as follows:

10-33-47. Immunity of officers, directors, and trustees. Any person ~~who~~ that 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)~~ 501(c) 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.

SECTION 103. AMENDMENT. Section 10-33-51 of the North Dakota Century Code is amended and reenacted as follows:

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 record 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 record in more than one capacity, but only if the document record indicates each capacity in which the individual signs.

SECTION 104. AMENDMENT. Section 10-33-72 of the North Dakota Century Code is amended and reenacted as follows:

10-33-72. Act of the members.

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class and except for the election of directors which is governed by section 10-32-34, 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, then 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~~ remote communication pursuant to section 10-33-75.

SECTION 105. AMENDMENT. Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

10-33-73. Action without a meeting by the members. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, 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, or consented to by authenticated electronic communication, 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.
 - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all members requires the approval of all members entitled to vote on the amendment.
 - b. 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 no later than five days after the effective time of the action.
 - ~~b.~~ c. Failure to provide the notice does not invalidate the written action.
 - ~~c.~~ d. 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.
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 this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate if the action was taken under this section.

SECTION 106. AMENDMENT. Section 10-33-74 of the North Dakota Century Code is amended and reenacted as follows:

10-33-74. Action Member 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.
6. With respect to a ballot by electronic communication:
 - a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-33-68 as if the ballot were a notice.
 - b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 107. AMENDMENT. Subsections 2, 5, and 7 of section 10-33-80 of the North Dakota Century Code are amended and reenacted as follows:

2. A member or a director, or the agent or attorney of a member or a director, may inspect all ~~documents~~ records 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.
5. The corporation may charge the requesting party a reasonable fee to cover the expenses of providing copies of ~~documents~~ records under this section.
7. A member or a director who is wrongfully denied access to or copies of ~~documents~~ records under this section may bring an action for injunctive relief, damages, and costs and reasonable attorney's fees.

SECTION 108. AMENDMENT. Section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

10-33-120. Service of process on corporation, foreign corporation, and nonresident directors.

1. The registered agent must be an agent of the corporation or foreign corporation, and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or a director may be served.
 - a. 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, notice, or demand.
 - b. 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 or foreign corporation may be served ~~either upon~~:
 - a. On the registered agent of the corporation; or upon foreign corporation;
 - b. On an officer of the corporation; or upon foreign corporation;
 - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
 - d. On the secretary of state as provided in this section.
3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the registered principal executive office if located in this state, then the secretary of state is ~~the an~~ agent of the corporation upon whom the process, notice, or demand may be served.

- a. Service on the secretary of state:
 - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b- (2) Shall include the return of the sheriff, or the affidavit of a ~~person~~ an individual who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can be found at the registered office or at the principal executive office if located in this state; and
 - e- (3) Is deemed personal service upon the corporation or foreign corporation and must be made by filing with the secretary of state:
 - (4) (a) Three copies of the process, notice, or demand; and
 - (2) (b) The fees provided in section 10-33-140; and
 - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
 - b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign 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 ~~The secretary of state shall maintain a record of all processes, notices, and demands~~ every process, notice, and demand served upon on 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~~ the process, notice, or demand.
6. ~~Nothing in this~~ This section limits does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation in any other manner permitted by law.

SECTION 109. AMENDMENT. Subsections 1 and 2 of section 10-33-123 of the North Dakota Century Code are amended and reenacted as follows:

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~~ provided by this chapter, the attorney general may issue subpoenas to any person.

SECTION 110. AMENDMENT. Subsection 1 of section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

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~~ record submitted by the foreign corporation pursuant to this chapter.

SECTION 111. AMENDMENT. Section 10-33-138 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

SECTION 112. AMENDMENT. Section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

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~~ provided in 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~~ provided in subsection 34 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~~ provided 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~~ provided in 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 Thereafter, 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~~ provided 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~~ this section when an annual report form could not be delivered to the corporation.

SECTION 113. AMENDMENT. Section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

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 articles of correction, twenty dollars.
 - d. Filing restated articles of incorporation, thirty dollars.
 - ~~d.~~ e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
 - ~~e.~~ f. Filing an intent to dissolve, ten dollars.
 - ~~f.~~ g. Filing articles of dissolution, twenty dollars.
 - ~~g.~~ h. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
 - ~~h.~~ i. Filing a registered agent's consent to serve in that capacity, ten dollars.
 - ~~i.~~ j. Filing a resignation as registered agent, ten dollars.
 - ~~j.~~ k. Filing an application to reserve a corporate name, ten dollars.
 - ~~k.~~ l. Filing a notice of transfer of a reserved corporate name, ten dollars.
 - ~~l.~~ m. Filing a cancellation of reserved corporate name, ten dollars.
 - ~~m.~~ n. Filing a consent to use of a deceptively similar name, ten dollars.
 - ~~n.~~ o. 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.~~ p. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.

- ~~p.~~ q. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- ~~q.~~ r. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~r.~~ s. Filing an annual report of a domestic or foreign corporation, ten dollars.

(1) The secretary of state shall charge and collect additional fees for late filing of the annual report:

~~(4)~~ (a) After the date ~~prescribed~~ provided in subsection 3 of section 10-33-139, five dollars; and

~~(2)~~ (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.

(2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.

~~s.~~ t. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.

u. 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~~ record, 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.

SECTION 114. AMENDMENT. Section 10-33-141 of the North Dakota Century Code is amended and reenacted as follows:

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~~ record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the ~~document~~ record 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 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~~ record required by this chapter to be approved by the secretary of state before the ~~document~~ record may be filed, then the secretary of state shall give written notice of the rejection to the person ~~who~~ that delivered the ~~document~~ record, specifying the reasons for rejection.
- a. ~~From such rejection the person~~ Within thirty days after the service of the notice of denial, the corporation or foreign corporation as the case may be, may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record 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 dissolves a corporation or revokes the certificate of authority to conduct activities in this state of any foreign corporation, pursuant to section 10-33-134, then, the corporation or foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated in the judicial district serving Burleigh County by filing with the clerk of the court a petition ~~setting forth~~ a including:
 - a. A copy of the corporation's articles of incorporation and a copy of the notice of dissolution given by the secretary of state; or
 - b. A copy of the foreign 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. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 6 of section 10-33-139, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:
 - a. File all past-due annual reports;
 - b. Pay the fees to the secretary of state for each annual report as provided in subdivision s of subsection 1 of section 10-33-140; and
 - c. Pay the reinstatement fee to the secretary of state as provided in subdivision s of subsection 1 of section 10-33-140.
6. 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 115. Section 10-33-141.1 of the North Dakota Century Code is created and enacted as follows:

10-33-141.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing.

That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-33-139, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
 - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
 - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 116. Section 10-33-141.2 of the North Dakota Century Code is created and enacted as follows:

10-33-141.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the corporation that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and
 - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
 - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.

4. With respect to the effective date of correction:

- a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
- b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
 - (1) On the date the statement of correction was filed:
 - (a) As to persons adversely affected by the correction; and
 - (b) For the purposes of subsection 3 of section 10-33-01.2; and
 - (2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 117. AMENDMENT. Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

10-33-142. Secretary of state - Evidence.

- 1. All certificates issued by the secretary of state and all copies of ~~documents~~ records 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~~ records 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 118. AMENDMENT. Section 10-33-142.1 of the North Dakota Century Code is amended and reenacted as follows:

10-33-142.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 119. AMENDMENT. Section 10-33-143 of the North Dakota Century Code is amended and reenacted as follows:

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~~ records 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 120. AMENDMENT. Subsection 2 of section 10-33-145 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the officers and directors of the nonprofit corporation or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:
 - a. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the acquiring entity;
 - b. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for purposes consistent with restrictions placed on assets of and with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home;
 - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation or entity operating or controlling the hospital or nursing home will receive fair market value for its assets and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;
 - d. Whether any conflict of interest or breach of fiduciary duty exists or was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the nonprofit corporation or entity operating or controlling a hospital or nursing home and any other party to the agreement or transaction;
 - e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation or entity operating or controlling a hospital or nursing home or to any other person;
 - f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and

- g. Whether the transaction is authorized by the nonprofit corporation's governing ~~documents~~ records.

SECTION 121. AMENDMENT. Section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. ~~In~~ For the purposes of chapters 45-13 through 45-21 unless the context or ~~subject matter~~ 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 any other case, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the partnership; or
 - (2) To a managing partner or agent of the partnership authorized by the partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
- ~~4.~~ 5. "Business" includes every trade, occupation, and profession.
- ~~4.~~ 5. "Debtor in bankruptcy" means a person ~~who~~ that is the subject of:
 - a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - b. A comparable order under federal, state, or foreign law governing insolvency.
- ~~5.~~ 6. "Distribution" means a transfer of money or other property from a partnership to a partner in the ~~partner's~~ partner's capacity of the partner as a partner or to the ~~partner's~~ transferee of the partner.
- ~~6.~~ 7. "Domestic organization" means an organization created under the laws of this state.
- ~~7.~~ 8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

- 8- 9. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - That may be directly reproduced in paper form by the recipient through an automated process.
- 9- 10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- 40- 11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- 44- 12. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- That a ~~document~~ record meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - That the secretary of state ~~shall~~ did then:
 - Record the actual date on which the ~~documents are~~ record was filed, and if different, the effective date of filing; and
 - Record the ~~document~~ record in the office of the secretary of state.
- 42- 13. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.
- 43- 14. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
- 44- 15. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.
- 45- 16. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.
- 46- 17. "Notice":
- Is given to a partnership ~~or to a partner of a partnership~~:

- (1) When in writing and mailed or delivered to ~~the partnership or to the partner~~ at the principal executive office of the partnership; or
 - (2) When given by a form of electronic communication consented to by ~~the partnership or a~~ managing partner to which the notice is given if by:
 - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the ~~partnership or a~~ managing partner has consented to receive notice-;
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the ~~partnership or a~~ managing partner has consented to receive notice-;
 - (c) ~~If by posting~~ Posting on an electronic network on which the ~~partnership or a~~ managing partner has consented to receive notice, together with separate notice to the ~~partnership or a~~ managing partner ~~if of~~ the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice-; or
 - (d) ~~If by any~~ Any other form of electronic communication by which the ~~partnership or a~~ managing partner has consented to receive notice, when directed to the partnership.
- b. Is given; ~~in all other cases~~ to a partner of the partnership:
- (1) When in writing and mailed or delivered to the ~~person~~ partner at an address designated by the person or at the last-known the principal executive office address of the ~~person~~ partnership; or
 - (2) When ~~handed to the person~~; given by a form of electronic communication consented to by the partner to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

(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;

(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 other usual place of abode of the person with some person of suitable age and discretion residing there; ~~or~~

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice-;

(b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice-;

(c) ~~If by posting~~ Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice-; or

(d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person-; or

e. ~~Is given when deposited in the United States mail with sufficient postage affixed.~~

d. ~~Is deemed received when it is given.~~

(5) When the method is fair and reasonable when all circumstances are considered.

~~47-~~ 18. "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, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity person subject to a governing statute; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

~~48-~~ 19. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.

~~49-~~ 20. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~20-~~ 21. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~24-~~ 22. "Partnership interest" or "partner's interest in the partnership" means all of ~~a partner's~~ the interests of a partner in the partnership, including the ~~partner's~~ transferable interest of the partner and all management and other rights.

~~22-~~ 23. "Principal executive office" means an office from which the partnership conducts business.

~~23-~~ 24. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

~~24-~~ 25. "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.

~~25-~~ 26. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

- (1) The document record is 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
 - (2) The signature and the document record are communicated by a method or medium of communication acceptable by the secretary of state.
- ~~26.~~ 27. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- ~~27.~~ 28. "Statement" means:
 - a. A statement of partnership authority under section 45-15-03;
 - b. A statement of denial under section 45-15-04;
 - c. A statement of dissociation under section 45-19-04;
 - d. A statement of dissolution under section 45-20-05;
 - e. A statement of conversion under section 45-21-04;
 - f. A statement of merger under section 45-21-07; or
 - f. g. An amendment or cancellation of any of the foregoing.
29. "Surviving organization" means an organization into which one or more other organizations are merged and which:
 - a. May preexist the merger; or
 - b. Are created by the merger.
- ~~28.~~ 30. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 122. Section 45-13-01.1 of the North Dakota Century Code is created and enacted as follows:

45-13-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement;
4. If a provision requires a signature, an electronic signature satisfies the requirement; and

5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16.

SECTION 123. AMENDMENT. Section 45-13-02 of the North Dakota Century Code is amended and reenacted as follows:

45-13-02. (102) Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
 - a. Knows of ~~it~~ the fact;
 - b. Has received ~~a notification of it~~ notice of the fact as provided in subsection 17 of section 45-13-01; or
 - c. Has reason to know ~~it~~ the fact exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking the steps reasonably required to inform the other person in ordinary course provided in subsection 17 of section 45-13-01, whether or not the other person learns of it.
4. A person receives a notification ~~when the notification:~~ as provided in subsection 17 of section 45-13-01.
 - a. ~~Comes to the person's attention; or~~
 - b. ~~Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.~~
5. Except as otherwise provided in subsection 6, and except as otherwise provided in subsection 17 of section 45-13-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction ~~for the person~~ knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the ~~individual's~~ individual's attention of the individual if the person had exercised reasonable diligence. ~~The~~
 - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
 - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the ~~individual's~~ individual's regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. ~~A partner's knowledge~~ Knowledge, notice, or receipt of a notification of a fact relating to the partnership by a managing partner is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.
7. With respect to notice given by a form of electronic communication:
 - a. Consent by a managing partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the managing partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
 - b. An affidavit of a managing partner or an authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

⁷⁸ **SECTION 124. AMENDMENT.** Section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

45-13-04.1. Partnership name.

1. A partnership name filed in a statement under section 45-13-05:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. ~~May not contain a word or phrase indicating or implying the partnership may not be organized under this chapter~~ the name of any partner;
 - c. ~~May not contain a the word or phrase indicating or implying the partnership is organized for a purpose other than a legal business purpose for which a partnership may be organized under this chapter~~ "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
 - d. ~~May not contain the a word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; and or phrase that indicates or implies that the partnership:~~
 - (1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or

⁷⁸ Section 45-13-04.1 was also amended by section 8 of House Bill No. 1273, chapter 384.

- (2) May not be formed under this chapter; and
- 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 filed with the statement is a ~~document~~ record which complies with subsection 3 of:
 - (a) Another partnership;
 - (b) A limited liability company;
 - (c) A corporation;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, 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 partnership name is deceptively similar to another name for purposes of this chapter.
- 3. ~~This subsection does not affect the right of a domestic partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.~~ If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, then the partnership name may not be used unless there is filed with the statement:
 - a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
- 4. This section does not affect the right of a partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.
- 5. This section and section 45-13-04.2 do not:
 - a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks,

service names, service marks; or any other rights to the exclusive use of a name or symbol.

b. Derogate the common law or any principle of equity.

~~5-~~ 6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:

a. Is formed 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 ~~45-10.1-03~~ 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, 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.

~~6-~~ 7. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership existence of the partnership. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

~~7-~~ 8. If ~~a partnership's~~ a partnership's the period of existence of the partnership is expired or a partnership's statement of a partnership filed under section 45-13-05 is expired, ~~then~~ the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was 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 pursuant to subsection ~~2~~ 3. A partnership that cannot reacquire the use of ~~the partnership's~~ its partnership name shall adopt a new partnership name that complies with this section.

SECTION 125. AMENDMENT. Subsections 3 and 4 of section 45-13-04.2 of the North Dakota Century Code are amended and reenacted as follows:

3. The right to the exclusive use of a 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 45-13-05.~~

4. The right to the exclusive use of a 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 the cancellation ~~together with the fees provided in section 45-13-05.~~

SECTION 126. AMENDMENT. Subsection 8 of section 45-13-05 of the North Dakota Century Code is amended and reenacted as follows:

8. a. The secretary of state shall charge and collect a fee for:
 - (1) Filing a statement under this section, one hundred dollars.
 - (2) Filing an amendment under this section, forty dollars.
 - (3) Filing a cancellation under this section, twenty-five dollars.
 - (4) Filing a renewal under this section, forty dollars.
 - (5) Filing a request to reserve a partnership name, ten dollars.
 - (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
 - (7) Filing a cancellation of reserved partnership name, ten dollars.
 - (8) Filing a statement of conversion or abandonment of conversion, fifty dollars and:
 - (a) If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - (b) If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
 - (9) Filing a statement of merger, fifty dollars.
 - (10) Any ~~document~~ record submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the ~~document~~ record.
- b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

⁷⁹ **SECTION 127. AMENDMENT.** Section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

45-21-01. (901) Definitions - Conversions and Mergers. ~~For the purposes of this chapter, unless the context otherwise requires:~~

1. "Certificate of creation" means:
 - a. A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
 - b. A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
 - c. A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
 - d. The filed registration, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
 - e. A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
2. "Constituent organization" means an organization that is party to a merger.
3. "Constituent partnership" means a constituent organization that is a partnership.
4. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-21-01 through 45-21-07.1.
5. "Converting organization" means an organization that converts into another organization pursuant to sections 45-21-01 through 45-21-07.1.
6. "Converting partnership" means a converting organization that is a partnership.
7. "Date of origin" means the date on which:
 - a. A corporation that is:
 - (1) The converting organization was incorporated; or
 - (2) The converted organization is deemed to be incorporated;

⁷⁹ Section 45-21-01 was also amended by section 9 of House Bill No. 1273, chapter 384.

- b. A limited liability company that is:
 - (1) The converting organization was organized; or
 - (2) The converted organization is deemed to be organized;
- c. A general partnership that is the converting organization was formed;
- d. A general partnership that is the converted organization was formed;
- e. A limited partnership that is:
 - (1) The converting organization was formed; or
 - (2) The converted organization is deemed to be formed;
- f. A limited liability partnership that is:
 - (1) The converting organization was established; or
 - (2) The converted organization is deemed to be established; and
- g. A limited liability limited partnership that is:
 - (1) The converting organization was formed; or
 - (2) The converted organization was deemed to be formed.
- 8. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.
- 9. "General partner" means a partner in a partnership and a general partner in a limited partnership.
- 10. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.
- 11. "Governing statute" means:
 - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, then chapter 10-19.1;
 - (2) If a limited liability company, then chapter 10-32;
 - (3) If a limited partnership, then chapter 45-10.2;
 - (4) If a general partnership, then chapters 45-13 through 45-21;
 - (5) If a limited liability partnership, then chapter 45-22; and

- (6) If a limited liability limited partnership, then chapter 45-23; and
 - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- ~~2-~~ 12. "Limited partner" means a limited partner in a limited partnership.
- ~~3-~~ 13. "Limited partnership" means a ~~limited~~ partnership ~~created~~ that is formed by two or more persons under chapter ~~45-10.1~~ 45-10.2, predecessor law, or comparable law of another jurisdiction and which has one or more general partners and one or more limited partners.
- 14. "Organizational records" means for an organization that is:
 - a. A corporation, its articles of incorporation and bylaws;
 - b. A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
 - c. A limited partnership, its partnership agreement;
 - d. A general partnership, its partnership agreement;
 - e. A limited liability partnership, its partnership agreement; or
 - f. A limited liability limited partnership, its partnership agreement.
- 15. "Originating record" means for an organization that is:
 - a. A corporation, its articles of incorporation;
 - b. A limited liability company, its articles of organization;
 - c. A limited partnership, its certificate of limited partnership;
 - d. A limited liability partnership, its registration; or
 - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
- 16. "Ownership interest" means for an organization which is:
 - a. A corporation, its shares;
 - b. A limited liability company, its membership interests;
 - c. A limited partnership, its partnership interests;
 - d. A general partnership, its partnership interests;
 - e. A limited liability partnership, its partnership interests; or
 - f. A limited liability limited partnership, its partnership interests.

4. 17. "Partner" includes both a general partner and a limited partner.
18. "Surviving organization" means an organization into which one or more other organizations are merged and which:
- May preexist the merger; or
 - Be created by the merger.

⁸⁰ **SECTION 128. AMENDMENT.** Section 45-21-02 of the North Dakota Century Code is amended and reenacted as follows:

45-21-02. (902) Conversion of partnership to limited partnership.

4. A partnership ~~Other organizations may be converted not convert~~ to a limited partnership. However, a partnership may convert to another organization pursuant to this section. sections 45-21-01 through 45-21-07.1 and a plan of conversion, if:
- The governing statute of the other organization authorizes the conversion;
 - The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement; is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include: The other organization complies with its governing statute in effecting the conversion.
 - A statement that the partnership was converted to a limited partnership from a partnership;
 - Its former name; and
 - A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
 - The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.
 - A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party

⁸⁰ Section 45-21-02 was also amended by section 10 of House Bill No. 1273, chapter 384.

to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 45-10.1.

SECTION 129. Section 45-21-02.1 of the North Dakota Century Code is created and enacted as follows:

45-21-02.1. Plan of conversion. A plan of conversion must be in a record and must include:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the conversion;
4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

SECTION 130. AMENDMENT. Section 45-21-03 of the North Dakota Century Code is amended and reenacted as follows:

45-21-03. (903) Conversion of limited partnership to partnership Plan of conversion approval and amendment.

1. ~~A limited~~ If the converting organization is a partnership may be converted to a partnership pursuant to this section, then:
 - a. A plan of conversion must be consented to by all of the partners of a converting partnership.
 - b. ~~Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of~~ Subject to any contractual rights, after a conversion of a limited partnership to a partnership must be is approved by all of the partners, and at any time before a filing is made under section 45-21-04, a converting partnership may amend the plan or abandon the planned conversion:
 - (1) As provided in the plan; and
 - (2) Except as prohibited by the plan, by the same consent as was required to approve the plan.
2. If the converting organization is not a partnership, then the approval and the amendment of the plan of conversion must comply with the governing statute in effecting the conversion.

3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.
4. The conversion takes effect when the certificate of limited partnership is canceled.
5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

SECTION 131. AMENDMENT. Section 45-21-04 of the North Dakota Century Code is amended and reenacted as follows:

45-21-04. (904) Effect of Statement of conversion - Entity unchanged.

1. A partnership or limited partnership that has been converted pursuant to this chapter is for all purposes the same entity that existed before the Upon receiving the approval required by section 45-21-03, a statement of conversion must be prepared in a record that must contain:
 - a. A statement that the converting organization is being converted into another organization, including:
 - (1) The name of the converting organization immediately before the filing of the statement of conversion;
 - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
 - (3) The form of organization that the converted organization will be; and
 - (4) The jurisdiction of the governing statute of the converted organization;
 - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-21-03;
 - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
 - d. The plan of conversion without organizational records;
 - e. A copy of the originating record of the converted organization; and
 - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 3 of section 45-21-03.

2. When a The statement of conversion takes effect: must be signed on behalf of the converting organization and filed with the secretary of state.
 - a. All property owned by the converting partnership or limited partnership remains vested in the converted entity; If the converted organization is a domestic organization, then:
 - (1) The filing of the statement of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
 - (2) Upon both the statement of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
 - b. All obligations of If the converting partnership or limited partnership continue as obligations of the converted entity; and organization is a foreign organization:
 - (1) That is transacting business or conducting activities in this state, then:
 - (a) The filing of the statement of conversion must include the filing with the secretary of state of an application for certificate of authority by the converted organization.
 - (b) Upon both the statement of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
 - (2) That is not transacting business or conducting activities in this state, then upon the statement of conversion being filed with the secretary of state, the secretary of state shall issue the appropriate certificate of conversion to the converted organization or its legal representative.
 - e. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted

organization in each registration when filing the statement of conversion.

SECTION 132. Section 45-21-04.1 of the North Dakota Century Code is created and enacted as follows:

45-21-04.1. Abandonment of conversion.

1. If the statement of conversion has not been filed with the secretary of state, and:
 - a. If the converting organization is a partnership, then subject to any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting partnership may abandon the planned conversion:
 - (1) As provided in the plan; and
 - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
 - b. If the converting organization is not a partnership, then the abandonment of the plan of conversion must comply with its governing statute.
2. If the statement of conversion has been filed with the secretary of state, but has not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
 - a. The name of the converting organization;
 - b. The provision of this section under which the plan is abandoned; and
 - c. If the plan is abandoned:
 - (1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or
 - (2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 133. Section 45-21-04.2 of the North Dakota Century Code is created and enacted as follows:

45-21-04.2. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 45-21-04 have been fulfilled or on a later date specified in the statement of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:

- a. An organization that has been converted as provided in sections 45-21-01 through 45-21-07.1 is for all purposes the same entity that existed before the conversion.
- b. Upon a conversion becoming effective:
 - (1) If the converted organization is not a partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
 - (2) All property owned by the converting organization remains vested in the converted organization;
 - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
 - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
 - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;
 - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
 - (7) Except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of sections 45-20-01 through 45-20-07.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

SECTION 134. AMENDMENT. Section 45-21-05 of the North Dakota Century Code is amended and reenacted as follows:

45-21-05. (905) Merger of partnerships.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more other organizations.

2. The plan of merger must set forth:
 - a. The name of:
 - (1) The partnership;
 - (2) Each other constituent organization proposing to merge; and
 - (3) The surviving organization into which the other organizations will merge;
 - b. The status of each partner;
 - c. The terms and conditions of the merger;
 - d. The manner and basis of converting the ownership interests of each ~~party to the merger~~ constituent organization into ownership interests or obligations of the surviving organization, or into money or other property in whole or part; and
 - e. The street address of the principal executive office of the surviving organization.
3. The plan of merger must be approved:
 - a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
 - b. In the case of a ~~limited~~ constituent organization other than a partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership governing statute of the constituent organization in the jurisdiction in which the constituent organization is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
5. The merger takes effect on the later of:
 - a. The approval of the plan of merger by all ~~parties to the merger~~ constituent organizations, as provided in subsection 3;
 - b. The filing of all ~~documents~~ records required by law to be filed as a condition to the effectiveness of the merger; or
 - c. Any effective date specified in the plan of merger.

SECTION 135. AMENDMENT. Section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

45-21-06. (906) Effect of merger.

1. When a merger takes effect:
 - a. The separate existence of ~~every partnership or limited~~ each constituent partnership that is a party to the merger, other than the surviving entity organization, ceases;
 - b. All property owned by each of the ~~merged partnerships or limited~~ constituent partnerships vests in the surviving entity organization;
 - c. All obligations of ~~every partnership or limited~~ each constituent partnership ~~that is a party to the merger~~ become the obligations of the surviving entity organization; and
 - d. An action or proceeding pending against a constituent partnership ~~or limited partnership that is a party to the merger~~ may be continued as if the merger had not occurred, or the surviving entity organization may be substituted as a party to the action or proceeding.
2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership ~~or limited partnership~~ to enforce an obligation of a ~~domestic partnership or limited partnership~~ that is a party to a merger constituent organization. The surviving entity organization shall promptly notify the secretary of state of the mailing address of its principal executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership ~~or limited partnership~~.
3. A general partner of the surviving partnership ~~or limited partnership~~ is liable for:
 - a. All obligations of a party to the merger for which the general partner was personally liable before the merger;
 - b. All other obligations of the surviving entity organization incurred before the merger by a ~~party to the merger~~ constituent organization, but those obligations may be satisfied only out of property of the entity surviving organization; and
 - c. All obligations of the surviving entity organization incurred after the merger takes effect; ~~but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.~~
4. If the obligations incurred before the merger by a ~~party to the merger~~ constituent partnership are not satisfied out of the property of the surviving ~~partnership or limited partnership organization~~, then the general partners of that party the constituent partnership immediately before the effective date of the merger shall contribute the amount necessary to satisfy ~~that party's~~ the obligations of the constituent partnership to the surviving entity organization, in the manner provided in section 45-20-07 ~~or in the Limited Partnership Act of the jurisdiction in which the party was formed~~, as the case may be, as if the merged party were dissolved.

5. A partner of a ~~party to a merger~~ constituent partnership who does not become a partner receive an ownership interest of the surviving ~~partnership or limited partnership~~ organization is dissociated from the ~~entity partnership~~, of which that partner was a partner, as of the date the merger takes effect. The surviving ~~entity~~ organization shall cause the ~~partner's ownership interest~~ of the partner in the ~~entity~~ constituent partnership to be purchased under section 45-19-01 or another statute specifically applicable to that ~~partner's ownership interest~~ of that partner with respect to a merger. The surviving ~~entity~~ organization is bound under section 45-19-02 by an act of a general partner dissociated under this subsection, and the partner is liable under section 45-19-03 for transactions entered into by the surviving ~~entity~~ organization after the merger takes effect.

SECTION 136. AMENDMENT. Section 45-21-07 of the North Dakota Century Code is amended and reenacted as follows:

45-21-07. (907) Statement of merger.

1. After a merger, the surviving organization may file a statement that one or more partnerships or ~~limited partnerships~~ other constituent organizations have merged into the surviving organization.
2. A statement of merger must be accompanied by the plan of merger without organizational records and must contain:
 - a. The name of:
 - (1) The partnership;
 - (2) Each other constituent organization that is a party to the merger; and
 - (3) The surviving organization into which the other constituent organizations were merged-;
 - b. The form of organization that the surviving organization will be;
 - c. The jurisdiction of the governing statute of the surviving organization; and
 - d. The street address of the principal executive office of the surviving organization and of an office in this state, if any.
3. Except as otherwise provided in subsection 4, for the purposes of section 45-15-02, property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another party to the merger is property held in the name of the surviving ~~entity~~ organization upon filing a statement of merger.
4. For the purposes of section 45-15-02, real property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another ~~party to the merger~~ constituent organization is property held in the name of the surviving ~~entity~~ organization upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

5. A filed and, if appropriate, recorded statement of merger, executed signed and declared to be accurate pursuant to subsection 3 of section 45-13-05, stating the name of a constituent partnership or limited partnership that is a party to the merger constituent organization in whose name property was held before the merger and the name of the surviving entity organization, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named constituent partnership and the surviving organization to the extent provided in subsections 3 and 4.

SECTION 137. Section 45-21-07.1 of the North Dakota Century Code is created and enacted as follows:

45-21-07.1. Liability of general partner after conversion or merger.

1. A conversion or merger under this chapter does not discharge any liability under sections 45-15-06, 45-15-07, and 45-15-08 of a person that was a general partner in or dissociated as a general partner from a converting or constituent partnership, but:
 - a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
 - b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent partnership; and
 - c. If a person is required to pay any amount under this subsection, then:
 - (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-15-06 when the obligation was incurred and has not been released from the obligation under section 45-20-06; and
 - (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred as provided in section 45-20-07.
2. In addition to any other liability provided by law:
 - a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
 - (1) Does not have notice of the conversion or merger; and
 - (2) Reasonably believes that:
 - (a) The converted or surviving organization or business is the converting or constituent partnership; and

- (b) The person is a general partner in the converting or constituent partnership; and
- b. A person that was dissociated as a general partner from a converting or constituent partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
 - (1) Does not have notice of the dissociation;
 - (2) Does not have notice of the conversion or merger; and
 - (3) Reasonably believes that:
 - (a) The converted or surviving organization or business is the converting or constituent partnership; and
 - (b) The person is a general partner in the converting or constituent partnership.

SECTION 138. AMENDMENT. Section 45-22-01 of 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:
 - 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 the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability partnership; or
 - (2) To a partner or agent of the limited liability partnership authorized by the limited liability partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Domestic limited liability partnership" means a partnership ~~that is organized~~ formed by two or more persons ~~under the laws of this state~~

chapter with a registration in effect and which is not a foreign limited liability partnership.

4. "Domestic organization" means an organization created under the laws of this state.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
9. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and has been determined by the secretary of state to conform to law.
 - b. That the secretary of state ~~shall~~ did then:
 - (1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and
 - (2) Record the ~~document~~ record in the office of the secretary of state.
10. "Foreign limited liability partnership" means a partnership ~~organized formed by two or more persons as a limited liability partnership under the laws of a jurisdiction other than the laws of this state which is in good standing in the partnership's~~ its jurisdiction of origin.
11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which ~~an~~ the organization may be created under the laws of this state.
12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.
14. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.
15. "Notice":
 - a. Is given to a limited liability ~~partnership or to a partner of the limited liability partnership~~:
 - (1) When in writing and mailed or delivered to ~~the limited liability partnership or the~~ a managing partner at the registered office or principal executive office of the limited liability partnership; or
 - (2) When given by a form of electronic communication consented to by ~~the limited liability partnership or the~~ a managing partner of the limited liability partnership to which the notice is given if by:
 - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which a managing partner of the limited liability partnership or the partner has consented to receive notice.
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which a managing partner of the limited liability partnership or the partner has consented to receive notice.
 - (c) ~~If by posting~~ Posting on an electronic network on which a managing partner of the limited liability partnership or the partner has consented to receive notice, together with separate notice to the limited liability partnership ~~or the partner~~ if the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) ~~If by any~~ Any other form of electronic communication by which ~~the limited liability partnership or a managing partner of the limited liability partnership~~ has consented to receive notice, when directed to the limited liability partnership.
 - b. Is given, ~~in all other cases~~ to a partner of the limited liability partnership:
 - (1) When in writing and mailed or delivered to the ~~person~~ partner at an ~~address designated by the person~~ the

registered office or at the last-known address of the person principal executive office of the limited liability partnership; or

- (2) When ~~handed~~ given by a form of electronic communication consented to ~~the person~~; by the partner to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

- (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;
- (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 there; ~~or~~
- (4) When given by a form of electronic communication consented to by the person to whom the notice is if by:
 - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice-;
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice-;

- (c) ~~If by posting~~ Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
- [1] The posting; or
 - [2] The giving of the separate notice; or
- (d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- e. ~~Is given when deposited in the United States mail with sufficient postage affixed.~~
- d. ~~Is deemed received when given.~~
- (5) When the method is fair and reasonable when all circumstances are considered.
16. "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, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity or~~ any other person subject to a governing statute; but
 - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.
17. "Originally registered" and "original registration" means the ~~document~~ record establishing the limited liability partnership status of the foreign limited liability partnership in the jurisdiction of origin of the foreign limited liability ~~partnership's jurisdiction of origin~~ partnership.
18. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.
19. "Principal executive office" means:
- a. An office from which the limited liability partnership conducts business; or
 - b. If the limited liability partnership has no office from which the limited liability partnership conducts business, the registered office of the limited liability partnership.

20. "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.
21. "Register" means the act of filing with the secretary of state which causes:
- A domestic limited liability partnership to be created; or
 - A foreign limited liability partnership to be authorized to transact business in this state.
22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership or foreign limited liability partnership.
23. "Registration" means the ~~document~~ record which, when filed with the secretary of state, causes:
- A domestic limited liability partnership to be created; or
 - A foreign limited liability partnership to be authorized to do business in this state.
24. "Signed" means:
- That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
 - With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state means that:
 - The ~~document~~ record is 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; and
 - The signature and the ~~document~~ record are communicated by a method or medium of communication acceptable by the secretary of state.

⁸¹ **SECTION 139. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

- The name of a limited liability partnership:

⁸¹ Section 45-22-04 was also amended by section 11 of House Bill No. 1273, chapter 384.

- a. Must be in the English language or in any other language, expressed in English letters or characters.
- b. Must contain:
 - (1) ~~The~~ the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; ~~or~~
 - (2) ~~In the case of a foreign limited liability partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.~~
- ~~e.~~ c. May not contain a word or phrase indicating or implying the limited liability partnership may not be formed under this chapter.
- ~~d.~~ c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
- ~~e.~~ d. May not contain a word or phrase ~~indicating that indicates or implying that implies that~~ the limited liability partnership is:
 - (1) ~~Is formed for a purpose other than one or more business purposes for which a:~~
 - (a) A lawful purpose for which a limited liability partnership may be formed under North Dakota law this chapter; or
 - (b) For a purpose stated in its registration; or
 - (2) May not be formed under this chapter.
- ~~f.~~ 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~~ record that complies with subsection 3 of this section, of:
 - (a) Another limited liability partnership;
 - (b) A corporation;
 - (c) A limited liability company;
 - (d) A limited partnership; or
 - (e) A limited liability limited partnership;
 - (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~~ 45-10.2-11, 45-13-04.2, 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.
- ~~g.~~ f. Need not be filed as provided in chapter 45-11 except if 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 to another name for purposes of this ~~section~~ chapter.
 - 3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, 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 earlier 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 the surviving organization in a merger with one or more 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 organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
 - a. Is 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~~ 45-10.2-11, 45-13-04.2, 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.
- 6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. 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 the limited liability partnership's registration may have been filed with the secretary of state.
- 7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 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 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:
 - a. By refiling a registration as provided in section 45-22-03;
 - b. By amending its registration as provided in section 45-22-03; or
 - c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, 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 as provided in subsection 3.
- 8. 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, regardless of whether the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.
 - b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 140. AMENDMENT. Section 45-22-05 of 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 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 a 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 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 destroy ~~any~~ all reserved name ~~request requests and name request~~ the index thereof one year after expiration.

SECTION 141. AMENDMENT. Section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

45-22-17. Service of process on a limited liability partnership or a foreign limited liability partnership and on a nonresident partner.

1. The registered agent must be an agent of the limited liability partnership or foreign limited liability partnership and any nonresident partner upon whom any process, notice, or demand required or permitted by law to be served on the limited liability partnership, the foreign limited liability partnership, or a partner may be served.
 - a. When a foreign limited liability partnership transacts business without a registration or when the registration of a foreign limited liability partnership is suspended or revoked, the secretary of state is an agent of the foreign limited liability partnership for service of process, notice, or demand.
 - b. Acceptance of a managing partnership status in a limited liability partnership or foreign limited liability partnership 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 on a limited liability partnership or foreign limited liability partnership may be served ~~on~~:
 - a. On the registered agent or ~~on~~;
 - b. On any responsible person found at the registered office or ~~on~~ at the principal executive office if located in this state;
 - c. On a managing partner of the partnership; or
 - d. On the secretary of state as provided in this section.
- ~~2.~~ 3. 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, then the secretary of state is ~~the~~ an agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.
 - a. Service on the secretary of state:
 - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
 - b- (2) Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.
 - e- (3) 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:
 - (4) (a) Three copies of the process, notice, or demand; and
 - (2) (b) The fees provided in section 45-22-22.
 - (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
 - d. b. The secretary of state immediately shall forward, by ~~certified~~ registered mail addressed to the limited liability partnership or foreign limited liability partnership at the ~~limited liability partnership's~~ registered office or principal place of business in this state, a copy of the process, notice, or demand.
 - e- ~~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 limited liability partnership or foreign limited liability partnership that has voluntarily withdrawn its registration or which has forfeited its registration as

provided in section 45-22-21.1. The court shall determine if service is proper:

- a. If a limited liability partnership or foreign limited liability partnership has voluntarily withdrawn its registration, then service may be made as provided in subsection 2.
 - b. If a limited liability partnership or foreign limited liability partnership has forfeited its registration as provided in section 45-22-21.1, then service may be made as provided in subsection 3.
3. 5. 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 the process, notice, or demand.
4. 6. 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.

⁸² **SECTION 142. AMENDMENT.** Section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.

1. Each domestic limited liability partnership and each foreign limited liability partnership authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided by subsection 3, an annual report setting forth:
 - a. The name of the limited liability partnership and ~~the~~ its jurisdiction of origin.
 - b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
 - c. The address of the limited liability partnership's chief executive office.
 - d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
 - e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.

⁸² Section 45-22-21.1 was also amended by section 2 of House Bill No. 1253, chapter 385.

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~~ provided in subsection 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.
 - a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.
 - b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.
 - (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
 - (2) If the annual report is filed before the deadlines ~~prescribed~~ provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual 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.
4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and that the registration of the limited liability partnership may be revoked pursuant to subsection 5.
 - a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.
 - b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.

5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.
 - a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.
 - b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.
6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.
 - a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
 - b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office of record.
 - c. The secretary of state's decision that a registration must be revoked under this subsection is final.
7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are 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~~ provided in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

SECTION 143. AMENDMENT. Section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Secretary of state - 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. If 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 registration as a foreign limited liability partnership, fifty dollars.
- c. Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars.
 - (1) The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - (4) (a) After the date ~~prescribed~~ provided in subsection 3 of section 45-22-21.1, twenty dollars; and
 - (2) (b) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.
 - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-22-21.1 or the annual report lacks sufficient payment as required by this subdivision.
- 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 domestic limited liability partnership or foreign limited liability partnership affected by the change.
- k. Filing a registered agent's consent to serve in the capacity of registered agent, 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 domestic limited liability partnership, ten dollars.

- p. Filing any process, notice, or demand for service, twenty-five dollars.
 - q. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.
2. The secretary of state shall charge and collect for:
- a. Furnishing a copy of any ~~document, instrument, record~~ or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.
 - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, twenty dollars.
 - c. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

SECTION 144. AMENDMENT. Section 45-22-23 of the North Dakota Century Code is amended and reenacted as follows:

45-22-23. Secretary of state - 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 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. Every answer 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, the interrogatory must be answered by that individual;
 - (2) To a domestic limited liability partnership, the interrogatory must be answered by a managing partner; or
 - (3) To a foreign limited liability partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited liability partnership.
 - c. The secretary of state need not file any ~~document~~ record to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the ~~document~~ record 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 that disclose a violation of this chapter.
 - e. Each managing partner of a domestic limited liability partnership or a resident partner or designated partner of a 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 fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
3. If the secretary of state rejects any document record required by this chapter to be approved by the secretary of state before the document record may be filed, the secretary of state shall give written notice of the rejection to the person ~~who that~~ delivered the document record, specifying the reasons for rejection. ~~That person~~
 - a. Within thirty days after the service of the notice of denial, the limited liability partnership may appeal to the district court of the county in which the registered office of the domestic limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a copy of the document record sought to be filed and a copy of the written rejection of the document record by the secretary of state. The court shall try the matter de novo.
 - b. The court shall 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, then the foreign limited liability partnership may appeal to district court ~~of the county where the registered office of the foreign limited liability partnership in this state is situated~~ in the judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a, including:
 - a. A copy of the foreign limited liability partnership's registration; and
a
 - b. A copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
5. If the court order sought is one for reinstatement of a domestic limited liability partnership registration that has been revoked as provided in subsection 5 of section 45-22-22.1, or for reinstatement of the

registration of a foreign limited liability partnership that has been revoked as provided in subsection 6 of section 45-22-21.1, then, together with any other action the court deems proper, any such order which orders the reinstatement of the registration of a domestic or foreign limited liability partnership registration shall require the domestic or foreign limited liability partnership to:

- a. File all past-due annual reports;
 - b. Pay the fees to the secretary of state for each annual report as provided in subsection 1 of section 45-22-22; and
 - c. Pay the reinstatement fee to the secretary of state as provided in subsection 1 of section 45-22-22.
6. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

SECTION 145. Section 45-22-23.1 of the North Dakota Century Code is created and enacted as follows:

45-22-23.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
 - a. For a statement of dissociation, send a copy of the filed statement:
 - (1) To the person which the statement indicates has dissociated as a partner; and
 - (2) To the limited liability partnership; and
 - b. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 45-22-22, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

- a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
- b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 146. Section 45-22-23.2 of the North Dakota Century Code is created and enacted as follows:

45-22-23.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the limited liability partnership that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of the state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and
 - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
 - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
 - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
 - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:

- (1) On the date the statement of correction was filed:
 - (a) As to persons adversely affected by the correction; and
 - (b) For the purposes of subsections 3 and 4 of section 45-10.2-06; and
- (2) On the date the original record was filed as to all other persons and for all other purposes.

⁸³ **SECTION 147. AMENDMENT.** Section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

45-23-01. Definitions. ~~h~~ For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability limited partnership; or
 - (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. ~~"Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.~~
4. "Domestic organization" means an organization created under the laws of this state.
- ~~5.~~ 4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

⁸³ Section 45-23-01 was also amended by section 12 of House Bill No. 1273, chapter 384.

- ~~6-~~ 5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - That may be directly reproduced in paper form by the recipient through an automated process.
- ~~7-~~ 6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~8-~~ 7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record ~~and executed~~ which is signed or adopted by a person with the intent to sign the record.
- ~~9-~~ 8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - That the secretary of state ~~shall~~ did then:
 - Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and
 - Record the ~~document~~ record in the office of the secretary of state.
- ~~10-~~ 9. "Foreign limited liability limited partnership" means a ~~limited liability limited~~ partnership that is formed by two or more persons under the laws of a jurisdiction other than this state, and:
- Organized under the laws other than the laws of this state for Which is required by those laws to have one or more general partners and one or more limited partners;
 - Whose general partners and limited partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to this chapter;
 - For a purpose or purposes for which a limited liability limited partnership may be ~~organized~~ formed under this chapter; and
- ~~b-~~ d. ~~It~~ Is in good standing in the jurisdiction of origin.
- ~~11-~~ 10. "Foreign limited partnership" means a ~~limited~~ partnership that is:
- Organized formed by two or more persons under laws other than the laws of this state for;

- a. Which is required by those laws to have one or more general partners and one or more limited partners;
- b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to chapter 45-10.2;
- c. For a purpose for which a limited partnership may be organized under chapter ~~45-10.4~~ 45-10.2; and
- ~~b-~~ d. Authorized to transact business in this state as provided in chapter ~~45-10.4~~ Is in good standing in its jurisdiction of origin.

42. 11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which ~~an~~ the organization may be created under the laws of this state.

12. "General partner" means:

- a. With respect to a limited liability limited partnership, a person:
 - (1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or
 - (2) That was a general partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and
- b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited liability limited partnership.

13. "Governing statute" means:

- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, then chapter 10-19.1;
 - (2) If a limited liability company, then chapter 10-32;
 - (3) If a limited partnership, then chapter 45-10.2;
 - (4) If a general partnership, then chapters 45-13 through 45-21;
 - (5) If a limited liability partnership, then chapter 45-22; and
 - (6) If a limited liability limited partnership, then this chapter; and
- b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

- 43- 14. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was ~~created~~ established.
- 44- 15. "Limited liability limited partnership", ~~except in the phrase "foreign limited liability limited partnership"~~, means a ~~domestic limited liability limited~~ partnership formed by two or more persons having one or more general partners and one or more limited partners which is formed under or elects to become subject to this chapter.
16. "Limited partner" means:
- a. With respect to a limited liability limited partnership, a person that:
 - (1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or
 - (2) Was a limited partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and
 - b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited liability limited partnership.
- 45- 17. "Limited partnership", ~~except in the phrase "foreign limited partnership" and "foreign limited liability limited partnership"~~, means a ~~limited~~ partnership formed under chapter 45-10.4 having one or more general partners and one or more limited partners which is formed under or elects to become subject to chapter 45-10.2.
- 46- 18. "Notice":
- a. Is given to a limited liability limited partnership ~~or to a partner of the limited liability limited partnership~~:
 - (1) When in writing and mailed or delivered to ~~the limited liability limited partnership or to the~~ a general partner at the registered office or principal executive office of the ~~limited liability limited~~ partnership; or
 - (2) When given by a form of electronic communication consented to by ~~the limited liability limited partnership or a~~ general partner of the limited liability limited partnership to which the notice is given if by:
 - (a) If by facsimile Facsimile communication, when directed to a telephone number at which ~~a general partner~~ the limited liability limited partnership ~~or a partner~~ has consented to receive notice;
 - (b) If by electronic Electronic mail, when directed to an electronic mail address at which ~~a general partner of~~

the limited liability limited partnership ~~or a partner~~ has consented to receive notice-;

- (c) ~~If by posting~~ Posting on an electronic network on which a general partner of the limited liability limited partnership ~~or a partner~~ has consented to receive notice, together with separate notice to the limited liability limited partnership ~~or a partner~~ if of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice-; or

- (d) ~~If by any~~ Any other form of electronic communication by which the partnership or a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;

- b. Is given in all other cases to a partner of the limited liability limited partnership:

- (1) When in writing and mailed or delivered to the person partner at an address designated by the person or at the last known address of the person the registered office or principal executive office of the limited liability limited partnership; or

- (2) When ~~handed~~ given by a form of electronic communication consented to by the person; partner to which the notice is given if by:

- (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;

- (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;

- (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

- (d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;

- c. Is given in all other cases:

- (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;
- (3) When left at the office of the person with a clerk or other person in charge of the office; or if:
 - (a) If there is no one in charge, when left in a conspicuous place in the office ~~and if;~~ 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; ~~or~~
- (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice-;
 - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice-;
 - (c) ~~If by posting~~ Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice-; or
 - (d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- (5) When the method is fair and reasonable when all circumstances are considered;

~~e.~~ d. Is given when deposited in the United States mail with sufficient postage affixed; and

~~d.~~ e. Is deemed received when given.

~~47.~~ 19. "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, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust,~~

~~estate, trust, enterprise, and or any other legal or commercial entity person subject to a governing statute; but~~

- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

~~48-~~ 20. "Principal executive office" means:

- a. An office from which the limited liability limited partnership conducts business; or
- b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

~~49-~~ 21. "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.

~~20-~~ 22. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership or foreign limited liability limited partnership.

~~24-~~ 23. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~22-~~ 24. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:
 - (1) The ~~document~~ record is signed by a person authorized to sign by this chapter, 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; and
 - (2) The signature and the ~~document~~ record are communicated by a method or medium acceptable by the secretary of state.

⁸⁴ **SECTION 148. AMENDMENT.** Section 45-23-02 of the North Dakota Century Code is amended and reenacted as follows:

45-23-02. Applicability of chapter ~~45-10.1~~ 45-10.2.

1. In any case not provided for in this chapter, chapter ~~45-10.1~~ 45-10.2 governs.
2. If applying chapter ~~45-10.1~~ 45-10.2 to a limited liability limited partnership and unless the context otherwise requires:
 - a. All references in chapter ~~45-10.1~~ 45-10.2 to "limited partnership" refer to "limited liability limited partnership"; and
 - b. All references in chapter ~~45-10.1~~ 45-10.2 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter ~~45-10.1~~ 45-10.2, that provision of this chapter takes precedence.

⁸⁵ **SECTION 149. AMENDMENT.** Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
 - a. Must be in the English language or in another language expressed in English letters or characters.
 - b. Must contain:
 - (1) ~~Without~~ without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state; ~~or,~~
 - (2) ~~In the case of a foreign limited liability limited partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.~~
 - c. May ~~not~~ contain the name of a ~~limited~~ any partner ~~unless:~~
 - (1) ~~The name is also the name of a general partner; or~~

⁸⁴ Section 45-23-02 was also amended by section 13 of House Bill No. 1273, chapter 384.

⁸⁵ Section 45-23-03 was also amended by section 14 of House Bill No. 1273, chapter 384.

- ~~(2) The business of the limited liability limited partnership was carried on under that name before the admission of that limited partner.~~
- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.
- e. May not contain a word or phrase indicating that indicates or implying that implies that the limited liability limited partnership may:
- (1) Is organized for a purpose other than:
- (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
- (b) For a purpose stated in its certificate of limited liability limited partnership; or
- (2) May not be organized under this chapter.
- f. ~~May not contain a word or phrase indicating or implying the limited liability limited partnership is organized for a purpose other than a legal business purpose for which a limited liability limited partnership may be organized under this chapter.~~
- g- ~~May not contain a word or phrase indicating or implying the limited liability limited partnership is organized other than for a purpose stated in the certificate of the limited liability 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 certificate a ~~document~~ record in compliance with subsection 3, of:
- (a) Another limited liability limited partnership;
- (b) A limited partnership;
- (c) A corporation;
- (d) A limited liability company; or
- (e) A limited liability partnership;
- (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~~ 45-10.2-11, 45-13-04.2, 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 limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
 - 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 earlier right of the applicant to the use of the name in this state.
4. This section does not ~~abrogate~~:
 - a. Abrogate or limit ~~the~~:
 - (1) The law of unfair competition or unfair practices; ~~chapter~~
 - (2) Chapter 47-25; ~~the~~
 - (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 ~~any~~
 - (4) Any other rights to the exclusive use of any name or symbol.
 - b. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Is 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~~ 45-10.2-11, 45-13-04.2, 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.
- 6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
- 7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, 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 as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:
 - a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
 - b. By amending pursuant to section 45-10.2-24; or
 - c. By reinstating pursuant to section 45-10.2-108, 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 3.
- 8. Subject to section 45-23-07, this section applies to any foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

⁸⁶ **SECTION 150. AMENDMENT.** Section 45-23-04 of the North Dakota Century Code is amended and reenacted as follows:

45-23-04. Limited liability limited partnership formation and conversion of a limited partnership to a limited liability limited partnership or conversion of a limited liability limited partnership to a limited partnership.

- 1. If a limited partnership does not exist, then a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:

⁸⁶ Section 45-23-04 was also amended by section 15 of House Bill No. 1273, chapter 384.

- a. That complies with the name requirements in section 45-23-03;
 - b. That contains a statement that limited liability limited partnership status is elected; and
 - c. That otherwise conforms to the requirements of section ~~45-10.1-08~~ 45-10.2-23.
2. An existing limited partnership:
- a. May elect to ~~become~~ convert to a limited liability limited partnership:
 - (1) By obtaining ~~approval to be governed by this chapter by the vote necessary~~ the consent of each general partner to ~~amend~~ convert the limited partnership agreement ~~except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;~~ a limited liability limited partnership unless:
 - (a) The certificate of limited partnership or the partnership agreement of the limited partnership provides for the conversion with the consent of less than all general partners; and
 - (b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.
 - A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;
 - (2) By complying with the name requirements of section 45-23-03; and
 - (3) By filing with the secretary of state, together with the fees provided in sections ~~45-10.1-15~~ 45-10.2-109 and 45-23-08, a ~~document~~ record that is designated as both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:
 - (a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;
 - (b) Contains a statement that limited liability limited partnership status is elected; and
 - (c) Otherwise conforms to the requirements of section ~~45-10.1-09~~ 45-10.2-23.
 - b. ~~Continues~~ Which converts to be a limited liability limited partnership is for all purposes the same entity in existence that

existed before the filing with the secretary of state pursuant to this section conversion.

3. An existing limited liability limited partnership:

a. May elect to convert to a limited partnership:

(1) By obtaining the consent of each general partner to convert the limited liability limited partnership to a limited partnership unless:

(a) The certificate of limited liability limited partnership or the partnership agreement of the limited liability limited partnership provides for the conversion with the consent of less than all general partners; and

(b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;

(2) By complying with the name requirements of section 45-10.2-11; and

(3) By filing with the secretary of state, together with the fees provided in sections 45-10.2-109 and 45-23-08, a record that is designated as both an amended certificate of limited liability limited partnership and a certificate of limited partnership which:

(a) Amends the limited liability limited partnership name to comply with the name requirements of section 45-10.2-11; and

(b) Otherwise conforms to the requirements of section 45-10.2-23.

b. Which converts to a limited partnership is for all purposes the same entity that existed before the conversion.

SECTION 151. AMENDMENT. Subsections 1 and 2 of section 45-23-05 of the North Dakota Century Code are amended and reenacted as follows:

1. If a limited partnership does not exist, then a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.
2. An existing limited partnership electing to ~~become~~ convert to a limited liability limited partnership is governed by this chapter on the later of the

filing of the ~~document~~ record designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that ~~document~~ record which is within ninety days after the filing of the ~~document~~ record.

SECTION 152. AMENDMENT. Section 45-23-06 of the North Dakota Century Code is amended and reenacted as follows:

45-23-06. General partner liability. An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership.

1. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner.
2. This section applies notwithstanding anything inconsistent in the partnership agreement.

⁸⁷ **SECTION 153. AMENDMENT.** Section 45-23-07 of the North Dakota Century Code is amended and reenacted as follows:

45-23-07. Foreign limited liability limited partnership - Adopting limited liability limited partnership status. An existing ~~With respect to a foreign limited liability limited partnership authorized to transact business in this state pursuant to, in any case not provided for in this chapter, chapter 45-10.2 and section 45-10.1-52 which subsequently adopts and maintains limited liability limited partnership status in the jurisdiction of origin shall file with the secretary of state, together with the fees required in sections 45-10.1-15 and 45-23-08:~~

1. A document designated as both an amended foreign limited partnership registration as required by section ~~45-10.1-55~~ and a foreign limited liability limited partnership registration as required by section ~~45-10.1-52~~; and
2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin 45-23-02 shall govern.

⁸⁸ **SECTION 154. AMENDMENT.** Section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

45-23-08. Secretary of state - Fees for filing ~~documents~~ records. The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred dollars.

⁸⁷ Section 45-23-07 was also amended by section 16 of House Bill No. 1273, chapter 384.

⁸⁸ Section 45-23-08 was also amended by section 17 of House Bill No. 1273, chapter 384.

2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing statement of conversion of a limited liability limited partnership, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
4. 9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
- ~~5.~~ 10. Filing a reservation of limited liability limited partnership name, ten dollars.
- ~~6.~~ 11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
- ~~7.~~ 12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
- ~~8.~~ 13. Filing a consent to use of a deceptively similar name, ten dollars.
- ~~9.~~ 14. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
- ~~40.~~ 15. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability limited partnership affected by the change.
- ~~44.~~ 16. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
- ~~42.~~ 17. Filing a resignation as registered agent, ten dollars.

- ~~43.~~ 18. Filing a registration of foreign limited liability limited partnership, one hundred dollars.
- ~~44.~~ 19. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.
- ~~45.~~ 20. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
21. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.
22. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:
- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
- b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
- ~~46.~~ 23. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
- ~~47.~~ 24. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
- ~~48.~~ 25. Filing an annual report of limited liability limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
- ~~a.~~ (1) After the date ~~prescribed~~ provided in subsection 3 of section ~~45-10.1-44~~ 45-10.2-108, twenty dollars; and
- ~~b.~~ (2) After the termination of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.
- ~~49.~~ 26. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.

- 27. Filing any process, notice, or demand for service, twenty-five dollars.
- 28. Furnishing a certificate of existence or authorization:
 - a. Fifteen dollars; and
 - b. Five dollars for a search of records.
- 29. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
 - a. One dollar for every four pages or fraction;
 - b. Fifteen dollars for the certificate and affixing the seal thereto; and
 - c. Five dollars for a search of records.

SECTION 155. AMENDMENT. Section 45-23-09 of the North Dakota Century Code is amended and reenacted as follows:

45-23-09. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 156. REPEAL. Section 45-22-01.1 of the North Dakota Century Code is repealed.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 101

HOUSE BILL NO. 1060

(Representatives Drovdal, N. Johnson, Boe)
(Senators Espegard, Taylor, Klein)

COMMUNITY DEVELOPMENT CORPORATIONS

AN ACT to amend and reenact sections 10-30.6-01 and 10-30.6-05 of the North Dakota Century Code, relating to community development corporation formation requirements and board of director requirements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.6-01 of the North Dakota Century Code is amended and reenacted as follows:

10-30.6-01. Organization.

1. To the extent permitted by federal law, any ~~three~~ one 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.~~

SECTION 2. AMENDMENT. Section 10-30.6-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30.6-05. Board of directors.

1. All the corporate powers of the corporation must be exercised by a board of no fewer than ~~fifteen~~ five 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.

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

Approved March 31, 2005
Filed March 31, 2005

COUNTIES

CHAPTER 102

SENATE BILL NO. 2142

(Senator Lyson)
(Representative Wieland)

SHERIFF FEES AND COMMISSIONS

AN ACT to amend and reenact sections 11-15-07, 11-15-08, 11-15-09, and 23-15-04 of the North Dakota Century Code, relating to fees and commissions collected by sheriffs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-07 of the North Dakota Century Code is amended and reenacted as follows:

11-15-07. County fees. The sheriff shall charge and collect the following fees on behalf of the county:

1. For serving a summons, writ of attachment, writ of execution, subpoena, notice of motion, or other notice or order of the court, order of replevin, injunctive order, citation, or any other mesne process and making a return thereon, in addition to the actual incurred costs of postage and long-distance telephone calls a total of ~~ten~~ twenty dollars for each person served.
2. For making a return of not-found, ~~ten~~ twenty dollars.
3. For taking and filing a bond in claim and delivery or any other undertaking to be furnished and approved by the sheriff, ~~ten~~ twenty dollars.
4. For making a copy of any process, bond, or paper, other than as is herein provided, two dollars per page.
5. For levying or executing any writ, ~~twenty-five~~ forty dollars.
6. For calling an inquest to appraise any goods and chattels that the sheriff may be required to have appraised, ~~ten~~ twenty-five dollars, and each appraiser ~~shall~~ is entitled to receive ~~fifty~~ one hundred dollars to be taxed as costs.
7. For advertising a sale by means of a sheriff's notice of sale, in addition to any publishing fees, ~~ten~~ twenty dollars.
8. For making a deed to land sold on execution or ~~pursuant to~~ under an order of sale, ~~ten~~ twenty dollars.

9. For issuing a certificate of redemption when property has been redeemed from a sale under execution or upon the foreclosure of a mortgage, ~~ten~~ twenty dollars.
10. For selling real or personal property under foreclosure of any lien or mortgage, ~~fifty~~ seventy-five dollars.
11. For boarding prisoners, a sum to be determined by the board of county commissioners, by resolution in advance, which sum must be per meal for meals actually served, and ~~must be~~ may not be less than two dollars for breakfast, two dollars and fifty cents for dinner, and three dollars and fifty cents for supper.

SECTION 2. AMENDMENT. Section 11-15-08 of the North Dakota Century Code is amended and reenacted as follows:

11-15-08. Commissions collected by sheriff.

1. Except as provided in section 11-15-09, the sheriff is entitled to collect commissions on behalf of the county on all moneys received and disbursed by the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property as follows:
 - a. On the first one thousand dollars, ~~fifty~~ seventy-five dollars.
 - b. On all moneys in excess of one thousand dollars, one percent.
2. Except as provided in subsection 3, if no sale is held under subsection 1, the sheriff may not collect a commission.
3. If personal property is taken by the sheriff on an execution, under a requisition in claim and delivery, or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the commission specified in subsection 1 based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer under section 11-15-14.

SECTION 3. AMENDMENT. Section 11-15-09 of the North Dakota Century Code is amended and reenacted as follows:

11-15-09. Allowances when plaintiff bids in property at sale. When the person in whose favor an execution or order of sale has been issued by the court bids in the property sold under the execution or pursuant to the judgment, the sheriff or other person making the sale shall collect on behalf of the county either of the following fees, and no more:

1. When the amount for which the property is bid on does not exceed one thousand dollars, ~~twenty~~ forty dollars.
2. When the amount for which the property is bid on exceeds one thousand dollars, ~~thirty~~ seventy-five dollars.

SECTION 4. AMENDMENT. Section 23-15-04 of the North Dakota Century Code is amended and reenacted as follows:

23-15-04. Exceptions. Nothing in this

1. This chapter ~~prohibits the following~~ does not prohibit:
 4. a. ~~Any~~ A licensed wholesaler, dealer, or jobber from selling at wholesale fireworks ~~which that~~ are not herein prohibited.
 2. b. The sale of any kind of fireworks for shipment directly out of the state.
 3. c. The use of fireworks by ~~airplanes, railroads, or other~~ transportation agencies for signal purposes or illumination.
 4. d. The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations.
2. ~~Application~~ An application for a license as distributor must be made to the state fire marshal on forms prescribed by the state fire marshal. ~~Application~~ An application for a license as a retailer must be made to the county sheriff on forms prescribed by the state fire marshal. Each application must be accompanied by the required fee, which must be two hundred fifty dollars for a distributor's license and ~~five~~ twenty dollars for a retailer's license. Fees for distributors' licenses must be deposited in the general fund in the state treasury and fees for retailers' licenses must be deposited in the county general fund. The license is valid only for the calendar year in which issued and must at all times be displayed at the place of business of the licensee. The licenses are in addition to any other license required by law or municipal ordinance. The licensing provisions of this section do not, ~~however,~~ apply to a retailer who is required to become licensed by any municipality. Any license fee levied by a municipality must be deposited in the municipality's general fund.

~~It is unlawful for any~~ A person not licensed as a wholesaler or retailer ~~to may not~~ bring any fireworks into this state, and ~~it is unlawful for any~~ a retailer ~~in this state to~~ may not sell any fireworks ~~which that~~ have not been purchased from a wholesaler licensed under this chapter. ~~Any persons~~ A person licensed under this chapter shall keep available for inspection by the state fire marshal or any sheriff, police officer, or local fire marshal a copy of each invoice for fireworks purchased as long as any fireworks included on the invoice are held in the licensee's possession, which invoice must show the license number of the wholesaler from whom the purchase was made.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 103

SENATE BILL NO. 2180

(Senators Holmberg, Trenbeath)

RECORDING OF PERSONAL REPRESENTATIVE'S DEEDS

AN ACT to amend and reenact section 11-18-03 of the North Dakota Century Code, relating to instruments recorded without auditor's certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-03 of the North Dakota Century Code is amended and reenacted as follows:

11-18-03. Instruments entitled to record without regard to taxes. The following instruments may be recorded by the recorder without the auditor's certificate referred to in section 11-18-02:

1. A sheriff's or referee's certificate of sale on execution or on foreclosure of a mortgage.
2. A mineral deed conveying oil, gas, and other minerals in or under the surface of lands.
3. A ~~final decree of distribution~~ personal representative's deed or any order document terminating joint tenancy or a life estate or any judgment or decree affecting title to real estate, which must be presented to the auditor's office prior to being placed of record in order to allow the auditor to make such changes in the tax rolls of the auditor's office as may be necessary.
4. Any deed conveying to the state, or to any political subdivision or municipal corporation thereof, any right of way for use as a public street, alley, or highway.
5. Any plat, replat, or auditor's lot accompanied by a resolution requesting the recording of the plat, replat, or auditor's lot by the governing body of a political subdivision.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 104

SENATE BILL NO. 2024

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

DOCUMENT PRESERVATION FUND

AN ACT to create and enact a new section to chapter 11-18 of the North Dakota Century Code, relating to county recorder reports to the legislative council regarding use of document preservation funds; to amend and reenact sections 11-18-05 and 11-18-22 of the North Dakota Century Code, relating to the expiration of the document preservation fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-05 of the North Dakota Century Code is amended and reenacted as follows:

11-18-05. (~~Effective through June 30, 2005~~) Fees of recorder. The recorder shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, ten dollars for the first page and three dollars for each additional page. In addition, for all documents recorded under this section that list more than five sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for the first page of each instrument recorded under this subdivision must be placed in the document preservation fund.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the recorder before the page will be accepted for recording.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the recorder before such instrument will be accepted for recording.
 - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the first or last page of each instrument for the recorder's recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.

- b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, ten dollars for the first page and three dollars for each additional page plus three dollars for each such additional document number or book and page. In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for the first page of each instrument recorded under this subdivision must be placed in the document preservation fund.
 - c. Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars.
 - d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ten dollars.
- 2. For filing any non-central indexing system instrument, ten dollars.
 - 3. For making certified copies of any recorded instrument or filed non-central indexing system instrument, the charge is five dollars for the first page and two dollars for each additional page. For making a noncertified copy of any recorded instrument or filed non-central indexing system instrument, a fee of not more than one dollar per instrument page.
 - 4. For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code central filing data base, the computerized central notice system or the computerized statutory liens data base, for receiving printouts, and for other services provided through the computerized system, the fee is the same as that provided in sections 41-09-96 and 54-09-11.
 - 5. The recorder may establish procedures for providing access for duplicating records under the recorder's control. Such records include paper, photostat, microfilm, microfiche, and electronic or computer-generated instruments created by governmental employees.
 - 6. Duplicate recorders' records stored offsite as a security measure are not accessible for reproduction.

(Effective after June 30, 2005) Fees of recorder. The recorder shall charge and collect the following fees:

- 1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, seven dollars for the first page and three dollars for each additional page. In addition, for all documents recorded under this section that list more than five

sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.

- (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the recorder before the page will be accepted for recording.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the recorder before such instrument will be accepted for recording.
 - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the first or last page of each instrument for the recorder's recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.
- b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, seven dollars for the first page and three dollars for each additional page plus three dollars for each such additional document number or book and page. In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.
 - e. Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars.
 - d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ten dollars.
2. For filing any non-central indexing system instrument, ten dollars.
 3. For making certified copies of any recorded instrument or filed non-central indexing system instrument, the charge is five dollars for the first page and two dollars for each additional page. For making a noncertified copy of any recorded instrument or filed non-central indexing system instrument, a fee of not more than one dollar per instrument page.
 4. For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code central filing data base, the computerized central notice system or the computerized statutory liens data base, for receiving printouts, and for other services provided

through the computerized system; the fee is the same as that provided in sections 41-09-06 and 54-09-11.

5. The recorder may establish procedures for providing access for duplicating records under the recorder's control. Such records include paper, photostat, microfilm, microfiche, and electronic or computer-generated instruments created by governmental employees.
6. Duplicate recorders' records stored offsite as a security measure are not accessible for reproduction.

SECTION 2. AMENDMENT. Section 11-18-22 of the North Dakota Century Code is amended and reenacted as follows:

11-18-22. (~~Effective through June 30, 2005~~) Document preservation fund. The county treasurer shall establish a document preservation fund to receive the portion of the recording fees authorized by section 11-18-05. The revenue in this fund may be used only for contracting for and purchasing equipment and software for a document preservation, storage, and retrieval system; training employees to operate the system; maintaining and updating the system; and contracting for the offsite storage of microfilm or electronic duplicates of documents for the county recorder's office.

SECTION 3. A new section to chapter 11-18 of the North Dakota Century Code is created and enacted as follows:

Document preservation fund - Recorder reporting requirement to legislative council. Before March first of each even-numbered year, each recorder shall prepare a report that specifies how the county used the county's document preservation funds during the preceding two fiscal years; how the county's use of the document preservation funds has furthered the goal of document preservation; and the county's general strategic plans for document preservation. The county reports must be submitted to the North Dakota association of counties for compilation and submittal to the legislative council before April first of each even-numbered year.

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through July 31, 2009, and after that date is ineffective.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 105

HOUSE BILL NO. 1197

(Representatives Wieland, Conrad, Devlin)
(Senators Bowman, Triplett)

COUNTY BUDGET PREPARATION

AN ACT to amend and reenact section 11-23-05 of the North Dakota Century Code, relating to the deadline for county budget preparation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-23-05 of the North Dakota Century Code is amended and reenacted as follows:

11-23-05. Computing amount of levy. The amount which the board of county commissioners shall levy as the county tax shall be computed by adding together the amounts of the annual appropriation and of that part of any special appropriation which is to be raised by taxation and deducting therefrom so much of the probable receipts from all sources, except loans, and so much of the unappropriated balance in the county treasury at the close of the auditor's books for the previous year as the board deems advisable. The board, on or before the October ~~first of each year~~ meeting required by section 11-11-05, shall determine the amount of taxes that shall be levied for county purposes and shall levy all such taxes in specific amounts.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 106

SENATE BILL NO. 2237

(Senator Christmann)
(Representative Galvin)

RECREATION SERVICE DISTRICTS

AN ACT to amend and reenact sections 11-28.2-01 and 11-28.2-04 of the North Dakota Century Code, relating to requirements for establishment of a recreation service district and the powers of a recreation service district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

11-28.2-01. Establishment of recreation service districts - Petition - Purpose. The board of county commissioners of any county ~~in this state~~, at any meeting of ~~such~~ the board, by majority vote of all of the members may, upon the petition of ten percent of the ~~persons~~ individuals who qualify ~~pursuant to under~~ section 11-28.2-03 as voters of an area to be included within a proposed recreation service district, call for an election of all of the qualified voters of ~~such~~ the district to determine the question of the establishment of a recreation service district for the purpose of providing services, which may include police protection, sewer and water, garbage removal services, and public road construction and maintenance, in addition to ~~that those~~ provided by the local governing body or agency to summer homes, cottages, and other residences and establishments ~~as may that~~ exist within ~~such the~~ area, and provide for the improvement and control of the environmental quality of the recreation service district. ~~Said The~~ recreation service district ~~shall~~ must be limited in size and location to an area ~~which is~~ contiguous to or within one-quarter mile [402.34 meters] of the recreational waters of the area or to the areas of land which are dedicated to public use for recreational purposes. In addition, ~~said the~~ district ~~shall must~~ consist of not less than ~~fifty~~ forty privately owned seasonal homes or cottages and other residences and establishments. If a petition is presented to the board of county commissioners calling for ~~such an~~ election, ~~such the~~ petition ~~shall must~~ be accompanied by ~~such any~~ information ~~as required by~~ the board of county commissioners ~~shall require~~, including the boundaries of the proposed recreation district, the approximate number of qualified voters ~~as defined in section 11-28.2-03~~, and a sufficient deposit of money to cover all costs of ~~such the~~ election. Within sixty days after the calling of ~~such an~~ election, the board of county commissioners shall provide an election on the question of whether ~~or not~~ a recreation service district should be established and shall establish procedures for voting and other necessary matters not inconsistent with ~~the provisions of~~ this chapter. The county commissioners shall give at least thirty days' notice of the election by certified mail to all qualified voters ~~as defined in section 11-28.2-03~~. If a majority of the qualified electors voting on the question approve of the establishment of a recreation service district, ~~such the~~ district ~~shall then must~~ be organized.

The board of commissioners of a recreation service district may extend the boundaries of the district to property within or contiguous to the one-quarter mile [402.34 meters] limit through the annexation procedures provided in sections 11-28.2-06 through 11-28.2-08.

SECTION 2. AMENDMENT. Section 11-28.2-04 of the North Dakota Century Code is amended and reenacted as follows:

11-28.2-04. Powers of recreation service districts - Levying of special assessments. Each recreation service district established under the provisions of this chapter ~~shall have the authority to~~ may provide services, which may include police protection, sewer and water, garbage removal services, and public road construction and maintenance, in addition to ~~that~~ those provided by the local governing body or other agency to summer homes, cottages, and other residences and establishments ~~as may that~~ exist within its boundaries, ~~and to~~ provide for the improvement and control of the environmental quality of the recreation service district, and ~~to~~ levy special assessments ~~as may be necessary to provide such the~~ services. ~~All projects and services to be~~ Any project or service provided by a recreation service district other than ~~pursuant to under~~ section 11-28.2-04.1 ~~shall~~ must first be approved by a majority of the qualified voters of the district affected by ~~such~~ the special assessment and present and voting at an annual or special meeting called as provided in this chapter. The levying of special assessments for ~~sewer and water, garbage removal services; public road construction and maintenance,~~ and improvement of environmental quality ~~shall~~ must be levied against those parcels of property benefited in the manner provided by law for the levying of special assessments for municipalities and the costs of police protection may be levied in ~~such that~~ manner. ~~Any A~~ recreation service district may contract with other political subdivisions for joint or cooperative action as provided in chapter 54-40. The board of recreation service district commissioners ~~shall be~~ are responsible for the administration and accounting of ~~such any~~ obligations and accounts ~~as shall be~~ undertaken in accordance with ~~the provisions of~~ this chapter. The board of recreation service district commissioners shall serve as the special assessment commission and shall make ~~or cause to be made~~ a complete list of the annual benefits and assessments on each parcel of property within the district. The board shall also hear appeals from aggrieved property owners concerning assessments made, and ~~shall have the authority to~~ may increase or decrease any assessment ~~as may be if~~ just and necessary. ~~No A~~ special assessment ~~shall~~ may not exceed the benefits ~~as~~ determined by the board to the parcel of property assessed. The board ~~shall have the authority to~~ may cooperate with the state or federal government ~~or any agency or department thereof~~ in furnishing assurances and meeting local cooperation requirements, within the scope of the power of ~~said the~~ board, in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of the area, including waters, within the recreation service district.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 107**SENATE BILL NO. 2173**

(Senators Wardner, Triplett)
(Representative Hawken)

COUNTY PLANNING COMMISSION COMPENSATION

AN ACT to amend and reenact section 11-33-05 of the North Dakota Century Code, relating to compensation of county planning commission members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-05 of the North Dakota Century Code is amended and reenacted as follows:

11-33-05. Meetings - Officers. The commission shall meet within thirty days after its appointment and elect a chairman and other necessary officers from its membership. The commission may adopt rules and bylaws not inconsistent with the provisions of this chapter. A majority of the members of the commission shall constitute a quorum. Members of the commission may be compensated for their actual expenses in the same manner as members of the board of county commissioners. The board of county commissioners may also authorize payment of a sum not to exceed forty-five dollars per day for time actually spent in transacting the business of the planning commission, in addition to any salaries members of the planning commission receive from any other source, from the state or county or any municipality. The county auditor shall serve as secretary to the commission and shall keep all of the records and accounts of the commission.

Approved March 7, 2005

Filed March 8, 2005

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 108

SENATE BILL NO. 2148

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

CORRECTIONS ADMINISTRATION

AN ACT to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to definitions under the department of corrections and rehabilitation governing laws; and to amend and reenact sections 12-46-13, 12-47-01, 12-47-04, 12-47-11, 12-47-12, 12-47-13, 12-47-17, 12-47-18, 12-47-18.1, 12-47-31, 12-47-34, 12-48-01, 12-48-02, 12-48-03, 12-48-03.1, 12-48-07, 12-48-14, 12-48-22, 12-48.1-01, 12-48.1-02, and 12-48.1-03, subsection 1 of section 12-54.1-01, and sections 12-54.1-03 and 29-27-05 of the North Dakota Century Code, relating to placements at the North Dakota youth correctional center, the North Dakota state penitentiary, prison employment and prison industries, training and work release programs, performance-based sentence reduction, meritorious sentence reduction, and transfer of offenders to the department of corrections and rehabilitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-13 of the North Dakota Century Code is amended and reenacted as follows:

12-46-13. Who may be sent to North Dakota youth correctional center - Court procedure. Whenever a person district court finds an offender under the age of eighteen years is found of age guilty in any district court of a crime or public offense and subsequently placed in and commits the offender to the custody of the department of corrections and rehabilitation, the department may transfer the person offender to the North Dakota youth correctional center; however, the department shall first transfer that person the offender to the North Dakota youth correctional center if the person offender is under sixteen years of age. A person so committed who attains the age of eighteen years must be transferred to a penal institution or detention facility to serve the balance of the person's sentence. A person so committed who attains the age of sixteen years may be transferred The department may transfer an offender who is between sixteen years of age and eighteen years of age to an adult correctional facility after the person has been department has given the offender an administrative hearing to determine if the interests of the department, the safety of other residents, or the interests of the general public justifies the transfer. A person sentenced The department may allow an offender who is between eighteen years of age and twenty years of age to remain at the North Dakota youth correctional center if the department determines that it is in the best interests of the department and the offender and it is not contrary to safety interests of the other residents or the general public. The department shall transfer an offender who has attained twenty years of age to an adult correctional facility. An

offender placed by the department at the North Dakota youth correctional center under this section has all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult sentenced to imprisonment in a penal institution committed to the legal and physical custody of the department.

SECTION 2. 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 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 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. The department shall confine, employ, and govern all offenders committed to the legal and physical custody of the department in the manner provided by law.

SECTION 3. AMENDMENT. Section 12-47-04 of the North Dakota Century Code is amended and reenacted as follows:

12-47-04. Imprisonment in penitentiary Commitment to the legal and custody of the department of corrections and rehabilitation is at hard labor. In all cases in which a person is sentenced to imprisonment in the penitentiary, district court has committed an offender to the legal and physical custody of the department of corrections and rehabilitation it shall be at hard labor, whether or not so designated by the jury or district court.

SECTION 4. AMENDMENT. Section 12-47-11 of the North Dakota Century Code is amended and reenacted as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of the division of adult services department of corrections and rehabilitation, shall have the charge, custody, and control of the penitentiary and the persons imprisoned in offenders committed to the legal and physical custody of the department and placed by the department at the penitentiary, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the penitentiary or within the premises of the penitentiary. The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates offenders placed by the department at the penitentiary.

SECTION 5. AMENDMENT. Section 12-47-12 of the North Dakota Century Code is amended and reenacted as follows:

12-47-12. Warden to make rules. The warden, subject to the approval of the director of the division of adult services department of corrections and rehabilitation, shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules:

1. For the admission of visitors, but admission of visitors may not be limited to less than four days in each week, subject to the space limitations of the facility.
2. For the government of officers and employees of the penitentiary.

3. For the conduct of ~~persons~~ offenders imprisoned in the penitentiary.

A printed copy of the rules must be furnished to each ~~person~~ offender imprisoned in the penitentiary at the time of admission and to each official or employee of the penitentiary at the time of hire. Two copies of the rules must be furnished to the state law library for the use of the state officials and the public. The rules must be explained to a ~~prisoner~~ an offender who cannot read English.

SECTION 6. AMENDMENT. Section 12-47-13 of the North Dakota Century Code is amended and reenacted as follows:

12-47-13. Warden to keep records. The warden shall ~~keep a correct~~ require that a daily record is kept of all transactions of the ~~office~~ and a ~~correct~~ account of all the warden's doings. The warden shall keep a daily journal of the proceedings of the penitentiary in which shall be noted all infractions of the rules and regulations thereof by any officer or employee and shall enter in such journal a memorandum of every complaint made by any inmate of cruel or unjust treatment by any officer or other person, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any of the inmates, naming the inmate and specifying the offense and the punishment, if any, inflicted therefor, and said journal and memorandum must be laid before the director of the division of adult services upon request penitentiary. The warden shall require that records are kept for inmate discipline, inmate grievances, and staff discipline. The warden shall provide a report of the penitentiary to the director of the department of corrections and rehabilitation upon the request of the director.

SECTION 7. AMENDMENT. Section 12-47-17 of the North Dakota Century Code is amended and reenacted as follows:

12-47-17. ~~Warden to receive persons~~ Offenders committed to department of corrections and rehabilitation - Records to be kept. The ~~warden~~ department of corrections and rehabilitation shall receive any ~~person~~ offender who has been convicted, and committed to the legal and physical custody of the department of ~~corrections and rehabilitation~~, and assigned to the penitentiary when that ~~person~~ the offender has been delivered to the ~~warden~~ department together with a copy of the judgment and sentence of the court ordering the commitment to the custody of the department. The warden, immediately upon the receipt of any ~~person~~ an offender assigned by the department to the penitentiary, shall enter in a ~~book kept by the warden for that purpose~~, and as an official the record of the penitentiary, the name, age, sex, color, height, nationality, and every other fact, characteristic, and condition, natural or artificial, that in any way may tend to aid in the identification of the ~~person~~ offender. After an intake, evaluation, and classification process, the ~~warden~~ department shall assign the ~~inmate~~ offender to a ~~the penitentiary~~, another correctional facility, or other placement.

SECTION 8. AMENDMENT. Section 12-47-18 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18. ~~Warden~~ Director has custody of inmates pursuant to terms of sentence. The ~~warden~~ shall have the charge and custody of all inmates of the ~~penitentiary~~ director of the department of corrections and rehabilitation shall be responsible for offenders committed to the legal and physical custody of the ~~department~~. The ~~warden~~ director shall retain, confine, and imprison each ~~person~~ under sentence ~~offender committed to the penitentiary department~~ until the expiration of the ~~inmate's term of~~ offender's sentence or until the ~~inmate~~ otherwise offender is lawfully entitled to release. The ~~warden~~ director shall care for, govern,

and make an effort to employ all ~~inmates~~ offenders in conformity with their ~~respective~~ sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary and the department.

SECTION 9. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities. The ~~warden~~ director of the department of corrections and rehabilitation may transfer an offender to any facility under the ~~warden's~~ department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the ~~warden~~ director determines it may be in the best interests of the public, the offender, or the ~~penitentiary~~ department.

SECTION 10. AMENDMENT. Section 12-47-31 of the North Dakota Century Code is amended and reenacted as follows:

12-47-31. Discharge of inmates offenders - Clothing - Transportation. ~~Every person sentenced to the penitentiary, when discharged or released on parole, may be provided as determined by the warden, based upon need. The department of corrections and rehabilitation shall provide an offender released from the department appropriate clothing and transportation to a point within the state, based upon need.~~

SECTION 11. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is amended and reenacted as follows:

12-47-34. Escapes from warden's director's custody - Warden Director may offer reward for recapture - Payment of reward - Use of firearms.

1. The ~~warden, with the approval of the~~ director of the department of corrections and rehabilitation; ~~may shall~~ adopt measures necessary for the detection and capture of offenders escaping from the custody of the ~~warden or the department of corrections and rehabilitation~~. If an offender in the custody of the ~~warden or the department of corrections and rehabilitation~~ escapes, the ~~warden may~~ director shall use all lawful means for the apprehension of the offender. The ~~warden~~ director may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who has escaped from the custody of the ~~warden or the department of corrections and rehabilitation~~.
2. The ~~warden~~ director may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises.
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the ~~warden or the department of corrections and rehabilitation~~.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the ~~warden or the department of corrections and rehabilitation~~.

3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

SECTION 12. AMENDMENT. Section 12-48-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48-01. Employment of inmates offenders. All ~~persons~~ offenders committed to the department of corrections and rehabilitation may be employed for the benefit of the state to the extent employment is available.

SECTION 13. AMENDMENT. Section 12-48-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48-02. Director of the department of corrections and rehabilitation to make rules regarding employment of inmates offenders. The director of the department of corrections and rehabilitation shall establish rules and regulations relating to the care, treatment, employment, and management of all ~~prisoners, wherever they may be employed~~ offenders committed to the legal and physical custody of the department.

SECTION 14. AMENDMENT. Section 12-48-03 of the North Dakota Century Code is amended and reenacted as follows:

12-48-03. Manner of employing inmates offenders. The director of the department of corrections and rehabilitation and the warden of the penitentiary shall attempt to employ all ~~inmates of the penitentiary~~ offenders committed to the legal and physical custody of the department in maintaining the penitentiary and the penitentiary grounds thereof, in carrying on the work of the industries established at the penitentiary or at other state institutions, in doing any work necessary to be done in the erection, repair, or improvement of any of the state buildings, including the executive mansion, and the grounds of such buildings, or in the construction and improvement of the public highways of the state. ~~Inmates may also be employed~~ The department may employ offenders in work projects for county and local governmental agencies and subdivisions. The prisoners must be employed, insofar as department shall employ offenders when practicable, in the work to which they are best adapted and in the work that will make it possible for them to acquire skill so that they will be able to earn a livelihood when they are paroled or discharged from the institution. Inmates may be employed The department may employ offenders outside the yard of the penitentiary in cultivating and improving any ground belonging thereto to the department. The warden department must be held responsible for the escape of any inmate offender notwithstanding that such employment is outside the penitentiary if the escape is made possible through the warden's negligence or the negligence of the warden's subordinates of the department.

SECTION 15. AMENDMENT. Section 12-48-03.1 of the North Dakota Century Code is amended and reenacted as follows:

12-48-03.1. The director of the department of corrections and rehabilitation may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of the department of corrections and rehabilitation, is authorized to establish and engage in such new prison industries as the director deems necessary and which are of greatest benefit to and in the best interest of the state of North Dakota, the ~~state penitentiary, the Missouri River correctional center, and the inmates of the institutions~~

department, and offenders committed to the legal and physical custody of the department. The warden, with the approval of the director, may also discontinue existing industries where such discontinuance is deemed when necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such prison industries including the manufacture, sale, or distribution of the prison industries produce or products ~~therefrom~~, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary offenders committed to the department as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer ~~deemed~~ necessary or ~~of benefit~~ beneficial to the department. Except as provided in subsections 1, 2, and 3, the director may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products must be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase from the prison industries is impractical or prohibited by law. The ~~warden~~ department shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations, excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberesin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit or through export firms for sale to international markets.
2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of the office of management and budget or by the director of the department of corrections and rehabilitation.

SECTION 16. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is amended and reenacted as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of the ~~division of adult services~~ department of corrections and rehabilitation, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary. Procurement must be made by the warden according to chapter 54-44.4 and rules adopted under that chapter.

SECTION 17. AMENDMENT. Section 12-48-14 of the North Dakota Century Code is amended and reenacted as follows:

12-48-14. Compensation of inmates offenders. Prisoners engaged in ~~carrying on the~~ Offenders who work at the penitentiary ~~and or in its prison industries~~ shall receive compensation in an amount to be determined by the warden and approved by the director of the department of corrections and rehabilitation within the limits of legislative appropriations for that purpose. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner must be determined by the amount of work the prisoner performs on such task. All prisoners faithfully performing the daily task assigned shall receive work to each offender and shall pay the offender based on the amount of work the offender performs, up to the maximum compensation determined by the warden, and whenever it becomes necessary in carrying on this work for a prisoner to labor. If an offender has worked in excess of ten hours per day, the prisoner offender shall receive such additional compensation as is allowed by the warden may allow. All prisoners offenders working at the penitentiary in prison industries may receive pay based upon actual production of salable items as determined by the warden, to be paid out of such funds as may be appropriated by the legislative assembly appropriates.

SECTION 18. AMENDMENT. Section 12-48-22 of the North Dakota Century Code is amended and reenacted as follows:

12-48-22. Fines for misconduct of prisoner offender. The warden, with the approval of the director of the department of corrections and rehabilitation, shall institute and maintain a uniform system of fines and penalties to be deducted from the compensation credited to any prisoner offender for misconduct or refusal to perform the daily task assigned him.

SECTION 19. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. Director may provide certain services for inmates offenders. The director of the department of corrections and rehabilitation may participate in programs under in which inmates sentenced to the penitentiary or the Missouri River correctional center offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside the institution facilities under the control of the department. The director may obtain or contract with separate facilities with minimum security for the housing of inmates offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an inmate offender so released, the director may arrange for the housing of the inmate offender in local confinement facilities.

SECTION 20. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of eligibility for release programs. An inmate is offender may be eligible for programs outside the institution facilities under the control of the department of corrections and rehabilitation when the warden department determines the inmate offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An inmate may make application to the warden offender may apply to the director of the department for permission to participate in such programs. The warden, with the approval of the director of the department of corrections and rehabilitation, may

authorize participation in outside programs for an inmate offender who has been ~~sentenced~~ committed to ten years or less to the ~~state penitentiary or the Missouri River correctional center~~. In sentences of more than ten years, the legal and physical custody of the department. The parole board, ~~after approval by the warden~~ with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years. The offender shall submit a signed application which must include a statement that the ~~inmate offender~~ agrees to abide by all terms and conditions of the particular plan adopted for ~~him~~ the offender, and must ~~state the name and address of the proposed employer, if any, and must contain include~~ such other information as the parole board or the director of the department may require. The parole board may approve, disapprove, or defer action on an application approved by the ~~warden~~ director of the department. ~~The plan must be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the warden~~ The director of the department or the parole board may revoke approval of the application at any time after being granted granting the application. The ~~parole board and warden~~ department shall prescribe rules of conduct and treatment for all ~~inmates~~ offenders on release programs. ~~Short leaves, not to exceed seventy-two hours, may be granted, by the warden, with the approval of the director of the department of corrections and rehabilitation, to inmates with sentences of ten years or less and by the parole board, with the warden's approval to inmates with sentences of more than ten years and upon recommendation by the warden, to all inmates of the penitentiary or the Missouri River correctional center inmates who have been on work or education release programs for at least thirty days. The director of the department may grant short leaves, not to exceed seventy-two hours, to offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. All rules adopted by the parole board and the warden director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order No. 11755 issued by the President of the United States.~~

SECTION 21. AMENDMENT. Section 12-48.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-03. Use of funds earned on work release. ~~The plan for the inmate~~ An offender shall provide that use any funds earned in ~~outside employment will be used~~ work release in the following order: support of dependents; for necessary expenses of the ~~inmate offender~~, including room and board costs of the institution; any administration fee and fine; and restitution if a part of the sentence; ~~necessary support of dependents; and credited to inmate's personal~~. Any balance must be deposited in the offender's account to be paid ~~the inmate on release~~ to the offender in accordance with section 12-48-15.

SECTION 22. AMENDMENT. Subsection 1 of section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided under section 12.1-32-09.1, offenders ~~sentenced to the penitentiary or any of its affiliated facilities committed to the legal and physical custody of the department of corrections and rehabilitation~~ are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work

performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

SECTION 23. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. Except as provided under section 12.1-32-09.1, offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure, as provided by penitentiary and department rules and upon written recommendation of a penitentiary department multidisciplinary team, lump sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate offender.

SECTION 24. AMENDMENT. Section 29-27-05 of the North Dakota Century Code is amended and reenacted as follows:

29-27-05. Judgment of imprisonment in penitentiary department of corrections and rehabilitation. If the judgment is for imprisonment in the penitentiary commitment to the legal and physical custody of the department of corrections and rehabilitation, the sheriff of the county, upon receipt of a certified copy thereof, shall take and deliver the defendant to the warden of the penitentiary. He correctional facility designated by the department. The sheriff also shall deliver to the warden or other proper officer department a certified copy of the judgment and take from such warden or other proper officer the department a receipt for the defendant, and make return thereof to the court.

SECTION 25. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Director" means the director of the department of corrections and rehabilitation. The director may designate officers of the department to assist in carrying out the director's duties.
2. "Inmate" means an offender who the district court has committed to the legal and physical custody of the department of corrections and rehabilitation and who is confined in the North Dakota state penitentiary or its affiliated facilities or is confined in another state's correctional facility, a federal correctional facility, a county correctional facility or

regional corrections center, a private correctional facility, or has been placed in a community placement program, treatment facility, or transitional center by the department.

3. "Juvenile offender" means an offender who is supervised by an officer of the juvenile court or has been adjudicated unruly or delinquent by the juvenile court and placed in the custody of the division of juvenile services.
4. "Offender" means a person who has been committed to the legal and physical custody of the department of corrections and rehabilitation, or placed under the supervision and management of the department by a district court, by the parole board, or through the interstate compact for the supervision of adult offenders.
5. "Parolee" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by the parole board or through the interstate compact for the supervision of adult offenders.
6. "Probationer" means an offender who has been placed under the supervision and management of the department of corrections and rehabilitation by a district court or through the interstate compact for the supervision of adult offenders.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 109

SENATE BILL NO. 2125

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

PAROLE EXPIRATION DATES

AN ACT to create and enact a new section to chapter 12-59 of the North Dakota Century Code, relating to establishment and modification of parole expiration dates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-59 of the North Dakota Century Code is created and enacted as follows:

Establishment and modification of parole expiration dates. The parole board shall establish parole expiration dates in all parole cases. The parole board may not establish an initial parole expiration date that is earlier than the expiration date of the parolee's court-imposed sentence, less sentence reduction received under chapter 12-54.1. The length of the period of parole may not be extended more than five years for a felony and two years for a misdemeanor beyond the date that the court-imposed sentence would have otherwise expired had parole not been granted. The parole board may allow a parolee to earn performance-based parole reduction at the rate of up to five days per month in accordance with performance criteria established by the parole board. The board may terminate a parolee's supervision at any time earlier than the established date of release from parole if the parole board determines that early termination of supervision is warranted and termination of supervision is in the interest of justice. The parole board may not terminate supervision for a parolee who has a life sentence with opportunity for parole earlier than five years from the established date of release on parole.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 110

HOUSE BILL NO. 1484

(Representatives S. Kelsh, Delmore, Maragos, Zaiser)
(Senators Nelson, Syverson)

CRIMINAL HISTORY RECORD INFORMATION

AN ACT to create and enact section 12-60-16.11 of the North Dakota Century Code, relating to obtaining criminal history record information; and to amend and reenact section 12-60-16.6 of the North Dakota Century Code, relating to the dissemination of criminal history record information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁹ **SECTION 1. AMENDMENT.** Section 12-60-16.6 of 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~~ three years 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.

⁸⁹ Section 12-60-16.6 was also amended by section 2 of Senate Bill No. 2248, chapter 111.

- (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 12-60-16.11 of the North Dakota Century Code is created and enacted as follows:

12-60-16.11. Criminal history record information - Required action. Any person offering criminal background checks for compensation, for the purpose of screening applicants seeking a position in which the applicant is responsible for providing care for a vulnerable adult, shall utilize the bureau of criminal investigation statewide criminal history database in addition to any other compiled information. The entity shall pay any applicable fees set forth in section 12-60-16.9.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 111

SENATE BILL NO. 2248

(Senators Christmann, Andrist, Lindaas)
(Representatives Haas, L. Meier, Skarphol)

CRIMINAL HISTORY RECORD CHECKS

AN ACT to amend and reenact subsection 1 of section 4-41-02, sections 12-60-16.6, 12-60-16.9, 12-60-24, and 15.1-13-14, subsection 1 of section 15.1-13-20, section 15.1-13-23, subsection 4 of section 43-17-07.1, and sections 43-30-06, 50-11.1-06.2, and 54-59-20 of the North Dakota Century Code, relating to criminal history record checks; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person desiring to grow industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used ~~for the production of~~ to produce industrial hemp. Except for employees of the agricultural experiment station or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to ~~file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete~~ submit to a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and with the federal bureau of investigation for federal processing. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing industrial hemp for commercial purposes.

⁹⁰ **SECTION 2. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

⁹⁰ Section 12-60-16.6 was also amended by section 1 of House Bill No. 1484, chapter 110.

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.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

SECTION 3. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of ~~thirty~~ fifteen dollars for each state record check. The bureau shall ~~waive the fee for any criminal justice agency or court, and shall impose a fee of three~~ five dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bureau shall impose a fee of five dollars for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults. The bureau shall impose a fee of fifteen dollars for processing fingerprints necessary for each nationwide criminal history record check. The bureau shall waive the fees for any criminal justice agency or court.

SECTION 4. AMENDMENT. Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

12-60-24. City or county fingerprinting - Criminal history record checks.

~~The governing body of a city by ordinance or a county by ordinance or resolution may require each applicant for a specified occupation with the city or county to provide two sets of fingerprints.~~

1. a. The agencies and entities named in subsection 2 shall require each applicant, employee, or petitioner for adoption to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.
 - b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
 - c. The ~~city or county~~ may agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. ~~Federal~~ Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by a ~~city or county~~ an agency or entity is confidential. For a request for nationwide criminal history record information made by the ~~city or county~~ under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. ~~The~~ Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.
2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
 - a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.
 - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
 - c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.

- d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
- e. The private investigative and security board for licenses or registrations under section 43-30-06.
- f. The human services department for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.
- g. The human services department for carecheck registrations under section 50-11.1-06.2.
- h. The chief information officer of the information technology department for certain employees under section 54-59-20.
- i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
- j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.
- n. The department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the department of health who holds a license, certificate, or registration in a health-related field.

SECTION 5. AMENDMENT. Section 15.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-14. Initial licensure of teachers - Background Criminal history record check. The board shall check, or cause to be checked, the background criminal history record of each applicant for initial licensure as a teacher in accordance with section 12-60-24. ~~The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer or a properly trained designee of a law enforcement officer, and all other information necessary to complete a statewide 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.

SECTION 6. AMENDMENT. Subsection 1 of section 15.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall grant an interim reciprocal teaching license in accordance with sections 15.1-18-02 and 15.1-18-03 to an individual who holds a regular teaching license or certificate from another state, provided:
 - a. The individual's licensure or certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught at a public high school;
 - b. The individual's licensure or certification is based upon the completion of a professional education sequence from a state-approved teacher education program and includes supervised student teaching;
 - c. The individual submits to a background criminal history record check as required of initial applicants by this chapter;
 - d. The background criminal history record check reveals nothing for which a North Dakota applicant would be denied initial licensure; and
 - e. The individual submits a plan for meeting all requirements necessary to become a licensed teacher in this state.

SECTION 7. AMENDMENT. Section 15.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-23. 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 North Dakota teaching license or will obtain one within seven years from the date of first

employment under this section. The board shall ~~adopt rules relating to the background check of a~~ conduct a criminal history record check in accordance with section 12-60-24 on each person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The 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 license, as determined at the time of employment under this section.

SECTION 8. AMENDMENT. Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to ~~file a complete set of the applicant's or licensee's fingerprints taken by a law enforcement officer or a properly trained designee of a law enforcement officer and all other information necessary to complete~~ submit to a statewide 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. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with the ~~background criminal history record check and with obtaining and processing the fingerprints~~ are the responsibility of the licensee or applicant.

SECTION 9. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration 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 or registration, the board shall require each applicant to ~~file with the board a complete set of the applicant's fingerprints and all other information necessary to complete~~ submit to 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. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the ~~background criminal history record 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. A criminal history record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal

history check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history check was performed within the sixty days immediately preceding the date of the application. A state criminal history check is not required under this section if an applicant for registration provides to the board the results of a state background criminal history record check performed by the state in which the applicant currently resides and if the state background criminal history record check was performed within the sixty days immediately preceding the date of the application.

SECTION 10. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit ~~one set of the~~ fingerprints to the ~~federal bureau of investigation and one set to the~~ bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck in accordance with section 12-60-24. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 11. AMENDMENT. Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

54-59-20. Employees of the department - Security background information. The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer ~~be fingerprinted. The chief information officer shall ensure that the fingerprints are submitted to the bureau of criminal investigation and the federal bureau of investigation for verification of the identity of the individuals and to obtain records of criminal arrests and convictions~~ submit to a criminal history record check in accordance with section 12-60-24.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 112

HOUSE BILL NO. 1192

(Representative Drovdal)

(Senator Lyson)

PEACE OFFICER AUTHORITY

AN ACT to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to part-time peace officer authority, licensing, standards, and training; and to amend and reenact section 12-63-01 of the North Dakota Century Code, relating to the definition of peace officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Part-time peace officer license.

1. Except as provided in this section, all provisions of this chapter apply to part-time peace officer licenses. Except as limited by this section, a part-time licensed peace officer of this state has the authority of a licensed peace officer of this state.
2. The board shall issue a part-time license to any individual appointed by a criminal justice agency who meets the requirements of this chapter and the rules of the board for a part-time peace officer license.
3. A criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers. A criminal justice agency may not appoint a part-time licensed peace officer unless the part-time licensed peace officer acts under the direct or indirect supervision of a licensed peace officer designated by the criminal justice agency.

4. A part-time licensed peace officer may not exercise peace officer duties, including the exercise of arrest authority, when off duty.
5. Unless the part-time licensed peace officer has a valid North Dakota concealed weapons license, a part-time licensed peace officer may not carry a duty weapon or concealed weapon when off duty.
6. The board shall establish criteria for part-time licenses, including training curriculum, examination requirements, weapon training and certification, licensing requirements, and continuing education requirements.
7. The board shall adopt rules to implement part-time peace officer licenses and shall establish by rule fees for application for examination, initial licensing, renewal and late renewal, and reinstatement of part-time peace officer licenses.

Approved March 4, 2005

Filed March 4, 2005

CRIMINAL CODE

CHAPTER 113

HOUSE BILL NO. 1051

(Representatives Carlisle, Porter, Thoreson, Horter)
(Senators Lyson, Dever)

URINE TESTING FRAUDULENT PRACTICES

AN ACT to create and enact a new section to chapter 12.1-11 and a new section to chapter 19-04 of the North Dakota Century Code, relating to fraudulent practices in urine testing; to amend and reenact subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to conditions of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-11 of the North Dakota Century Code is created and enacted as follows:

Fraudulent practices in urine testing. A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance.

⁹¹ **SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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 and that the defendant may not willfully defraud a urine test administered as a condition of 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;

⁹¹ Section 12.1-32-07 was also amended by section 8 of Senate Bill No. 2015, chapter 43.

- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house; or
- h. Intensive supervision program.

SECTION 3. A new section to chapter 19-04 of the North Dakota Century Code is created and enacted as follows:

Distribution of substance or device to defraud urine test prohibited - Penalty. A person is guilty of a class A misdemeanor if that person willfully manufactures, advertises, sells, or distributes any substance or device that is intended to defraud a urine test designed to detect the presence of a chemical substance or a controlled substance.

Approved March 28, 2005
Filed March 28, 2005

CHAPTER 114

HOUSE BILL NO. 1262

(Representatives Delmore, DeKrey, Hawken)
(Senators Traynor, Trenbeath)

SIMPLE ASSAULT

AN ACT to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to simple assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, 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.
 - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of ~~simple~~ any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
 - c. A class B misdemeanor except as provided in subdivision a or b.

CHAPTER 115

HOUSE BILL NO. 1313

(Representatives Koppelman, DeKrey, Delmore)
(Senators Nelson, Traynor, Trenbeath)

SEXUAL OFFENDER SENTENCING

AN ACT to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the age of a person engaging in sexual conduct with a minor; to amend and reenact sections 12.1-20-03, 12.1-20-03.1, and 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing of sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, the actor is guilty of an offense only if the actor is at least four years older than the minor.

SECTION 2. AMENDMENT. Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-03. Gross sexual imposition - Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. ~~He~~ That person knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. ~~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 incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than fifteen years old; or

- b. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
- 3. a. An offense under this section is a class A ~~AA~~ felony if in the course of the offense the actor inflicts serious bodily injury upon the victim ~~or, if his the actor's~~ conduct violates subdivision a ~~or d~~ of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was more than five years older than the victim at the time of the offense.
- b. An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.
- c. Otherwise the offense is a class B ~~A~~ A felony.
- 4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

SECTION 3. AMENDMENT. Section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted 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~~ an offense 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 offense is a class AA felony if the actor was more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim at the time of the offense. 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.

SECTION 4. AMENDMENT. Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
2. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
3. If the defendant has pled 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 chapter 12.1-20,~~ the court shall impose a period of supervised probation of five years to be served after sentencing or incarceration. The court may impose an additional period of supervised 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 pled 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 chapter 12.1-20,~~ 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. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
4. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
5. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
6. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.

7. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 116

HOUSE BILL NO. 1211

(Representatives Delmore, DeKrey, Maragos)
(Senators Lyson, Nelson, Trenbeath)

UNAUTHORIZED USE OF PERSONAL IDENTIFYING INFORMATION

AN ACT to amend and reenact sections 12.1-23-11 and 12.1-23-12 of the North Dakota Century Code, relating to unauthorized use of personal identifying information of a deceased individual and jurisdiction in offenses involving conduct outside this state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹² **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-11. Unauthorized use of personal identifying information - Penalty.

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-04-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individual's employer;
 - h. The maiden name of the individual's mother; ~~or~~
 - i. The identifying number of a depository account in a financial institution; or
 - j. An individual's birth, death, or marriage certificate.

⁹² Section 12.1-23-11 was also amended by section 1 of Senate Bill No. 2251, chapter 447.

2. A person is guilty of ~~a class C felony~~ an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section or of a law of another state or a federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be considered for commencement of prosecution in any county where one of the offenses was committed.

⁹³ **SECTION 2. AMENDMENT.** Section 12.1-23-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-12. Jurisdiction - Conduct outside this state. Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive ~~such~~ the person of property is subject to prosecution under this chapter in the courts of this state. The Except as provided in section 12.1-23-11, the venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

Approved March 30, 2005
Filed March 31, 2005

⁹³ Section 12.1-23-12 was also amended by section 2 of Senate Bill No. 2251, chapter 447.

CHAPTER 117

SENATE BILL NO. 2363

(Senators Hacker, Bercier, Grindberg)
(Representatives Charging, DeKrey, Delmore)

GAMBLING DEFINITION

AN ACT to amend and reenact subsection 1 of section 12.1-28-01 of the North Dakota Century Code, relating to the definition of gambling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-28-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
 - a. Lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries; ~~or~~
 - b. Lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law; or
 - c. Use of gaming equipment and devices that may not otherwise be lawful in the state when the equipment or devices are used by any institution under the control of the state board of higher education which awards degrees of bachelor's or higher for the purpose of conducting scientific research in a controlled environment on the campus of that institution.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 118**HOUSE BILL NO. 1418**

(Representatives Grande, Galvin)

(Senators Dever, Espegard)

PROSTITUTION

AN ACT to amend and reenact section 12.1-29-03 of the North Dakota Century Code, relating to prostitution; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-29-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-03. Prostitution. ~~A person~~ An individual is guilty of prostitution, a class B misdemeanor, if ~~he~~ the individual:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; ~~or~~
2. Solicits another person with the intention of being hired to engage in sexual activity; or
3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 119**HOUSE BILL NO. 1293**

(Representatives Zaiser, S. Meyer, Onstad)
(Senators Fairfield, Heitkamp, Seymour)

HIRING INDIVIDUAL FOR SEXUAL ACTIVITY

AN ACT to create and enact a new section to chapter 12.1-29 of the North Dakota Century Code, relating to hiring an individual to engage in sexual activity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-29 of the North Dakota Century Code is created and enacted as follows:

Hiring an individual to engage in sexual activity. An individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of a class B misdemeanor.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 120

HOUSE BILL NO. 1409

(Representatives Grande, Haas, Kreidt)
(Senators Dever, Mutch)

RESTITUTION FOR METHAMPHETAMINE USE

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before 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~~ of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence ~~it~~ the court 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. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. 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 are 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.

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 shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the 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 may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 121

HOUSE BILL NO. 1061

(Representatives Koppelman, DeKrey, Delmore)
(Senators Traynor, Trenbeath, Nelson)

SEXUAL OFFENDER REGISTRATION

AN ACT to amend and reenact subsection 7 of section 12.1-32-15 of the North Dakota Century Code, relating to registration of sexual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, within at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment 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, school, or employment. Upon a change of address, the individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. 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.

Approved April 8, 2005

Filed April 13, 2005

CHAPTER 122

HOUSE BILL NO. 1162

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT RESTITUTION AND COLLECTION

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to restitution for nonpayment of child support; to amend and reenact sections 14-09-09.30 and 50-09-08.6 of the North Dakota Century Code, relating to collection of child support arrears; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Restitution to be required of certain offenders - Penalty. Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.

SECTION 2. AMENDMENT. Section 14-09-09.30 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.30. Monthly amount due. ~~The total amount of child support due in each month is:~~

1. If there is a current monthly support obligation, the total amount of child support due in each month is the sum of the obligor's current monthly support obligation; and
 - 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 equal to twenty percent of the obligor's current monthly support obligation; or
2. If there is no current monthly support obligation, the total amount of child support due in each month is:
 - a. An amount equal to the greater of:
 - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or

- (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
 - b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
 - c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.
 3. The total amount of child support due in each month under this section may be increased at the request of the obligor to repay an arrearage or by agreement with the public authority.

⁹⁴ **SECTION 3. AMENDMENT.** Section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.

1. As used in this section:
 - a. "License" means:
 - (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
 - (2) Any certificate, permit, or license issued by ~~lottery or by tag~~ an agency of the state which the obligor is required to obtain prior to engaging in a recreational activity; and
 - (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.
 - b. "Licensee" means a person who has applied for or currently possesses a license.
 - c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.

⁹⁴ Section 50-09-08.6 was also amended by section 17 of House Bill No. 1172, chapter 415.

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section.
3. Before withholding, restricting, or suspending a license under ~~this section subdivision a or b of subsection 2~~, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing to ~~the state agency~~ under subsection 5 within ten days of the date of the notice.
4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a license under subdivision c of subsection 2 at any time if the licensee fails to comply with a payment plan negotiated under this section. A copy of the state agency's order to withhold, restrict, or suspend a license must be sent to the licensee by first-class mail to the licensee's last-known address. The order must state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the order.
5. Upon A request for a hearing under this section, the state agency shall petition must be made to the court that issued or considered the child support order for an order authorizing the state agency to withhold, restrict, or suspend one or more licenses issued to the licensee. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the hearing request may be held in made to 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 licensee.
5. 6. The In a contest under this section, the court shall authorize must affirm the action of the state agency to withhold, restrict, or suspend a license only if unless it finds that the licensee's delinquency or failure to comply with a subpoena, a child support order, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, owes arrears in an amount greater than three times the obligor's licensee's current or most recent monthly child support obligation or five thousand dollars, whichever is less, or is not in compliance with an existing payment plan between the obligor licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.

- ~~6-~~ 7. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.
- ~~7-~~ 8. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
- ~~8-~~ 9. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
- ~~9-~~ 10. 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.
- ~~40-~~ 11. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

CHAPTER 123

HOUSE BILL NO. 1139

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

VICTIM'S STATEMENT CONFIDENTIALITY

AN ACT to amend and reenact subsection 17 of section 12.1-34-02 of the North Dakota Century Code, relating to confidentiality of victim's statements in parole and pardon review; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 17 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

17. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. If the offender will make a personal appearance, notice must be given by the parole board or pardon 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 the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.

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

Approved March 8, 2005

Filed March 8, 2005

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 124

SENATE BILL NO. 2204

(Senators J. Lee, Espegard, Warner)

(Representatives Iverson, Kingsbury)

MEDICAL LATE PAYMENT AND CREDIT CHARGES

AN ACT to amend and reenact sections 13-01-14 and 51-14-01 of the North Dakota Century Code, relating to medical services provider late payment charges and credit service charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-01-14 of the North Dakota Century Code is amended and reenacted as follows:

13-01-14. Late payment charge on accounts receivable - Medical bills.

1. A creditor may charge, receive, and collect a late payment charge on all money due on account from thirty days after the obligation of the debtor to pay has been incurred.
2. Except as provided in subsection 4, the late payment charge may not exceed one and three-fourths percent per month.
3. The late payment charge provided in this section may be charged only if, when the obligation was incurred, the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated.
4. A creditor may not charge, receive, or collect a late payment charge on medical or hospital bills during the initial ninety days following services. A After the initial ninety days have passed, a late payment charge may be imposed at a rate that does not exceed one percent per month; but the charge cannot. A late payment charged by a hospital under this subsection may not exceed twenty-five dollars per month. This subsection does not apply in cases of financial hardship as certified by the creditor. A medical services provider may not charge, receive, or collect a credit service charge on money due on a revolving charge account under chapter 51-14.
5. This Except as otherwise provided under subsection 4, this section does not apply to:
 - a. Money due on retail installment contracts, as defined in chapter 51-13.

- b. Money due on revolving charge accounts, as defined in chapter 51-14.

SECTION 2. 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 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 amount of credit extended, representing the total charges by the retail seller incident to investigating and extending credit under a revolving charge agreement and for extending to the retail buyer the privilege of paying 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~~:
 - a. A person ~~who~~ that pursuant to a revolving charge agreement, agrees to sell or sells goods or services pursuant to a revolving charge agreement and a, other than medical services. The term does not include a medical services provider.
 - b. A state-chartered or national bank that extends credit by the advancement of moneys or the payment for goods or services under a revolving charge agreement.
4. "Revolving charge agreement" means a written instrument, defining the terms of credit extended from time to time ~~pursuant thereto, pursuant to which~~ under the terms of the agreement. Under the agreement, the buyer's total unpaid balance thereunder, whenever incurred, is payable 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.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 125

HOUSE BILL NO. 1127

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

CONSUMER FINANCE, LICENSES, AND FEES

AN ACT to amend and reenact subsection 2 of section 13-03.1-06, subsection 2 of section 13-03.1-07, sections 13-03.1-07.1, 13-04.1-03, 13-04.1-04, and 13-04.1-05, subsection 3 of section 13-05-03, sections 13-05-05, 13-08-03, and 13-08-09, and subsection 12 of section 13-08-12 of the North Dakota Century Code, relating to consumer finance, money broker and collection agency licensee requirements and fees, and deferred presentment service provider licensee requirements, fees, and renewal applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 13-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The administrator shall issue a license to operate a consumer finance loan business if the administrator finds:
 - a. That the financial responsibility, financial condition, business experience, character, and general fitness of the applicant must reasonably warrant the belief that the business will be conducted lawfully and fairly. In determining whether this qualification is met and for the purpose of investigating compliance with this chapter, the administrator may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant, and whether the applicant has filed the appropriate registration with the North Dakota secretary of state if so required; and
 - b. That the applicant has assets a net worth of at least twenty-five thousand dollars for the operation of the business.

SECTION 2. AMENDMENT. Subsection 2 of section 13-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Each license must remain in effect until surrendered, revoked, or suspended; provided, that on or before the ~~tenth~~ first day of June of each year the licensee shall pay to the administrator the annual license fee for each license held, as a license fee for the succeeding fiscal year.

SECTION 3. AMENDMENT. Section 13-03.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-07.1. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted thirty

days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify the denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license. A consumer finance license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a consumer finance license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The consumer finance license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 4. AMENDMENT. Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-03. Application for money broker license. Every application for a money broker license, or for a renewal thereof, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department shall deem necessary and proper. The department may further require any application to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

SECTION 5. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of three hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund.

SECTION 6. AMENDMENT. Section 13-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's

license, the department may charge an additional fee of fifty dollars for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 7. AMENDMENT. Subsection 3 of section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The names and addresses of the applicant and those associated with the applicant. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company. The applicant must register with the North Dakota secretary of state if so required.

SECTION 8. AMENDMENT. Section 13-05-05 of the North Dakota Century Code is amended and reenacted as follows:

13-05-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license. A collection agency license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a collection agency license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The collection agency license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 9. AMENDMENT. Section 13-08-03 of the North Dakota Century Code is amended and reenacted as follows:

13-08-03. Qualifications for license. To qualify for a license, an applicant shall satisfy the following requirements:

1. Each applicant shall maintain unencumbered assets a net worth of at least twenty-five thousand dollars per licensed location, determined in accordance with generally accepted accounting principles.

2. The financial responsibility, financial condition, business experience, character, and general fitness of the applicant must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant, and whether the applicant has filed the appropriate registration with the North Dakota secretary of state, if so required.
3. Each applicant shall establish that neither the applicant nor any principal of the applicant has been convicted of a felony. A deferred sentence or federal pretrial diversion must be considered a conviction for purposes of this section.
4. Each applicant shall maintain a bond issued by a surety company authorized to do business in this state, in the amount of twenty thousand dollars, and the commissioner may require a larger bond if the commissioner determines the larger bond is necessary based on the volume of the applicant's business.

SECTION 10. AMENDMENT. Section 13-08-09 of the North Dakota Century Code is amended and reenacted as follows:

13-08-09. Expiration of license - Renewal. Licenses issued under this chapter expire as of July first ~~June thirtieth~~ of each year. A license may be renewed for the ensuing twelve-month period upon application ~~by the licensee establishing continued compliance with the requirements of this chapter~~ and the payment to the commissioner of the annual license fee, which is not subject to refund, before July June first of each year. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of such license.

⁹⁵ **SECTION 11. AMENDMENT.** Subsection 12 of section 13-08-12 of the North Dakota Century Code is amended and reenacted as follows:

⁹⁵ Section 13-08-12 was also amended by section 3 of House Bill No. 1321, chapter 127.

12. A licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The renewal fee must be paid in cash, money order, or cashier's check. The total period of deferral, including the initial deferral and one renewal, may not exceed forty-five days. An individual renewal period may not be less than fifteen days. After forty-five days the renewed deferred presentment check must be paid off in cash, money order, or ~~certified~~ cashier's check by the maker or must be deposited by the licensee.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 126

HOUSE BILL NO. 1141

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

COLLECTION AGENCY LICENSING

AN ACT to amend and reenact section 13-05-02 of the North Dakota Century Code, relating to licensing of collection agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-05-02 of the North Dakota Century Code is amended and reenacted as follows:

13-05-02. Collection agency license required to collect claims. Except as otherwise herein provided, no person other than a collection agency licensed and authorized under this chapter may advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or receive payment of any claim for another or sell or give away collection letters as demand forms in the state of North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law who are licensed to practice in the state of North Dakota, licensed real estate brokers, banks, trust companies, building and loan associations, credit unions, agencies of a state or of the federal government, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of creditman upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court. A person may not be considered to be engaged in collection activity within this state if that person's activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and the state has enacted similar legislation.

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 127

HOUSE BILL NO. 1321

(Representatives Dosch, Delmore, Kasper, S. Meyer)
(Senators Krebsbach, Wardner)

DEFERRED PRESENTMENT SERVICE TRANSACTION PROCEDURES

AN ACT to amend and reenact sections 13-08-01, 13-08-06, and 13-08-12 of the North Dakota Century Code, relating to deferred presentment service transaction procedures and limitations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-08-01 of the North Dakota Century Code is amended and reenacted as follows:

13-08-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Check" means a personal check signed by the maker and made payable to a licensee.
2. "Commissioner" means the commissioner of financial institutions.
3. "Completed deferred presentment service transaction" means a transaction that is completed when a check is redeemed by the maker by payment in full to the licensee in cash, money order, or certified check or by negotiation or deposit by the licensee, or when an electronic funds transfer or other transfer of money has taken place to repay the contracted debt.
4. "Customer" means a person to which funds are advanced under a deferred presentment service transaction.
5. "Deferred presentment service transaction" means a transaction ~~made under a written agreement between a licensee and the maker of a check under which the licensee by which a person:~~
 - a. Pays to ~~the maker of the check~~ a customer the amount of ~~the a~~ check, less the fees permitted under this chapter, and accepts a check from the ~~maker~~ customer dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment; ~~or~~
 - b. Accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check; or
 - c. Pays to the customer an agreed-upon amount, and obtains the customer's authorization to transfer or withdraw, electronically or otherwise, funds from a customer's account in repayment at some future, agreed-upon date.

- 5- 6. "Licensee" means a person licensed under this chapter to provide deferred presentment services.

SECTION 2. AMENDMENT. Section 13-08-06 of the North Dakota Century Code is amended and reenacted as follows:

13-08-06. Issuance of license - Posting.

1. Upon receipt of a complete application, the commissioner shall determine whether the qualifications prescribed under this chapter are satisfied. If the commissioner determines the qualifications are satisfied and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment service business.
2. A licensee shall keep the license conspicuously posted in the place of business of the licensee, and shall provide notice to its customers in this state of the license number under which it is operating.
3. A license issued under this section is effective through the remainder of the fiscal year ending June thirtieth after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

⁹⁶ **SECTION 3. AMENDMENT.** Section 13-08-12 of the North Dakota Century Code is amended and reenacted as follows:

13-08-12. Fees for service - Deferred presentment service transaction procedures - Penalty.

1. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the ~~maker of the check~~ customer a clear and conspicuous printed notice indicating:
 - a. That a deferred presentment service transaction is not intended to meet long-term financial needs.
 - b. That the ~~maker of a check~~ customer should use a deferred presentment service transaction only to meet short-term cash needs.
 - c. That the ~~maker of a check~~ customer will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount.
 - d. A schedule of fees charged for deferred presentment service.
 - e. Any information required under federal law.

⁹⁶ Section 13-08-12 was also amended by section 11 of House Bill No. 1127, chapter 125.

- f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
2. A licensee may charge a fee for the deferred presentment service, not to exceed twenty percent of the amount paid to the ~~maker of the check~~ customer by the licensee. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, ~~and no~~ except that a fee, not to exceed the cost to the licensee, may be charged for registering a transaction on a data base administered or authorized by the commissioner. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
3. A licensee may not disburse more than five hundred dollars to the ~~maker of a check~~ customer in a deferred presentment service transaction.
4. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate ~~face~~ value of all outstanding ~~checks~~ obligations from any one ~~maker~~ customer exceeding ~~five~~ six hundred dollars which is payable to the same or any other licensee. A licensee may not enter ~~into~~ a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction. A licensee may rely on a written or electronic representation of a ~~maker~~ customer regarding the existence of any outstanding ~~checks~~ obligations for deferred presentment held by a licensee other than the licensee receiving the representation until the data base provided for under this subsection is in operation, and after that time may not rely on a customer's representation but must verify the fact using the data base. However, if a licensee has multiple locations, that licensee may not rely on ~~such written~~ the representation of a ~~maker~~ customer regarding the existence of any outstanding ~~checks~~ obligation for deferred presentment held by that licensee, or one of the licensee's multiple locations, unless the licensee and the licensee's multiple locations use a point of sale registry or some other accounting system to attempt to prevent violations of this subsection. The commissioner shall administer or authorize the development of a data base in which each transaction must be recorded for the purpose of preventing violations of this section. The commissioner shall adopt rules governing the creation, structure, and use of the data base.
5. Before a licensee may negotiate or present a check for payment, the check must be endorsed with the actual name under which the licensee is doing business.
6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed or similarly authenticated by the ~~maker of the check~~ customer. The ~~written~~ agreement must contain the name of the licensee; the transaction date; the amount of the ~~check~~ obligation; and a statement of the total amount

of fees charged, expressed as a dollar amount and as an annual percentage rate. The ~~written~~ agreement must authorize the licensee to defer presentment or negotiation of the check, or electronic debit of the customer's account, until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee; ~~however, the maker.~~ A customer agreeing to an electronic deferred presentment service transaction may repay the obligation at any time before the agreed-upon date. A customer may rescind the any transaction by the close of the following business day following the day on which the customer receives payment from the licensee at no cost. If a customer agreeing to an electronic deferred presentment service transaction rescinds the transaction, the licensee must facilitate the repayment of the funds through the same electronic means the licensee used to deliver the funds to the customer.

7. If a check or electronic debit is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the ~~check~~ obligation. The licensee may contract for and collect a returned check or electronic debit charge not to exceed twenty dollars ~~per customer, per year.~~ No other fee or charge may be collected as a result of a returned check or electronic debit or as a result of default by the ~~maker of the check~~ customer in timely payment to the licensee.
8. A ~~maker of a check~~ customer who has authority to make ~~the a~~ check or authorize an electronic debit and enters ~~into~~ a deferred presentment service agreement is not subject to a criminal penalty relating to the check, electronic debit, or the deferred presentment service agreement unless the customer's account on which the check was written was closed on the original date of the transaction. At the time of entering a transaction involving a written check, a licensee shall verify that the account on which the check is written is open. A licensee may not pursue or threaten to pursue criminal penalties against a ~~maker of a check~~ customer for criminal penalties prohibited by this subsection.
9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
10. The amount paid to the ~~maker~~ customer by the licensee in a deferred presentment service transaction must be paid in the form of cash ~~or~~, check, or an electronic credit to the customer's account.
11. Each licensee must conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service. A licensee that engages in a deferred presentment service transaction via the internet shall require its customers to acknowledge the fees imposed using a click-through or other method that prevents customers from completing the transaction without reviewing the licensee's fees.
12. A licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The total period of deferral, including the initial deferral and one renewal, may not exceed ~~forty-five~~ sixty days. An individual renewal period may not be less than fifteen

days. After ~~forty-five~~ sixty days the renewed deferred presentment ~~check~~ service transaction must be paid off in cash, money order, electronic payment, or certified check by the ~~maker~~ customer or, if a check is used, the check must be deposited by the licensee.

13. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. It is presumed that a deferred presentment service transaction initiated within three business days before completion of a deferred presentment service transaction is a violation of this subsection.
14. A licensee may not conduct another business, other than a bona fide pawnbroking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers.
15. A licensee shall provide a notice in a prominent place on each deferred presentment service agreement in no less than ten-point type in substantially the following form:

State law prohibits this business from allowing customers to have outstanding at any one time, deferred presentment service transactions totaling more than ~~five~~ six hundred dollars.

16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 128

HOUSE BILL NO. 1174

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

MONEY TRANSMITTER AND CHECK SELLER LICENSING

AN ACT to create and enact chapter 13-09 of the North Dakota Century Code, relating to licensing, reports, and examination of money transmitters; to amend and reenact subsection 1 of section 6-01-01.1 of the North Dakota Century Code, relating to the financial institutions regulatory fund; to repeal chapter 51-17 of the North Dakota Century Code, relating to the licensing of check sellers; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-01-01.1 of 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 chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, 13-03.1, 13-04.1, 13-05, ~~and 51-17~~ 13-08, and 13-09.

SECTION 2. Chapter 13-09 of the North Dakota Century Code is created and enacted as follows:

13-09-01. License required.

1. On or after January 2, 2006, a person, except a person that is exempt pursuant to section 13-09-03, may not engage in the business of money transmission without a license as provided in this chapter.
2. A person not licensed under this chapter or not an authorized delegate of a licensee is engaged in providing money transmission if the person provides those services to residents of this state, even if that person has no physical presence in this state.
3. If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

13-09-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Applicant" means a person filing an application for a license under this chapter.

2. "Authorized delegate" means an entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.
3. "Commissioner" means the commissioner of the department of financial institutions.
4. "Control" means ownership of, or the power to vote, twenty-five percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there must be aggregated with the person's interest the interest of any other person controlled by that person or by any spouse, parent, or child of that person.
5. "Controlling person" means any person in control of a licensee.
6. "Department" means the department of financial institutions.
7. "Electronic instrument" means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services.
8. "Executive officer" means the licensee's president, chairman of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions.
9. "Key shareholder" means any person or group of persons acting in concert who is or are the owner of twenty-five percent or more of any voting class of an applicant's stock.
10. "Licensee" means a person licensed under this chapter.
11. "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents.
12. "Monetary value" means a medium of exchange, whether or not redeemable in money.
13. "Money transmission" means to engage in the business of the sale or issuance of payment instruments, stored value, or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, "money transmission" also includes bill payment services not limited to the right to receive payment of any claim for another.
14. "Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which

has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

15. "Payment instrument" means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument that is redeemable by the issuer in goods or services.
16. "Permissible investments" means:
- a. Cash;
 - b. Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
 - c. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;
 - d. Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;
 - e. Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;
 - f. Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;
 - g. Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
 - h. Receivables that are due to a licensee from its authorized delegates pursuant to a contract described in section 13-09-15, which are not past due or doubtful of collection; or
 - i. Any other investments or security device approved by the commissioner.
17. "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union, or savings and loan

association or other similar financial institution in an account specified by the licensee.

18. "Stored value" means monetary value that is evidenced by an electronic record.

13-09-03. Exclusions. This chapter does not apply to:

1. The United States or any department, agency, or instrumentality thereof;
2. The United States post office;
3. The state or any political subdivisions thereof;
4. Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks;
5. The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in federal reserve board regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof; and
6. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 13-09-15.

13-09-04. Licensed qualifications. To qualify for a license each applicant must satisfy the following requirements:

1. Each licensee under this chapter must at all times have a net worth of not less than one hundred thousand dollars, calculated in accordance with generally accepted accounting principles.
2. The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant must reasonably warrant the belief that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community. In determining whether this qualification is met and for purposes of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant.
3. Every corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, must be in good standing in the state of its incorporation. At the time of the filing of an application for a license under this chapter and at all times after a license is issued, all noncorporate applicants must be registered or qualified to do business in the state.

13-09-05. Bond or other security device.

1. Each application must be accompanied by a surety bond, irrevocable letter of credit, or such other similar security device, hereinafter "security device", acceptable to the commissioner in the amount of one hundred fifty thousand dollars. The commissioner may increase the amount of the bond or security device to a maximum of five hundred thousand dollars for good cause. The security device must be in a form satisfactory to the commissioner and must run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments and transmission of money. In the case of a bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security device or the commissioner may bring suit on behalf of such claimants, either in one action or in successive actions.
2. In lieu of a security device or of any portion of the principal thereof, as required by this section, the licensee may deposit with the commissioner, or with banks in this state as the licensee may designate and the commissioner may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities and cash must be deposited as aforesaid and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends thereon, with the approval of the commissioner may substitute other securities for those deposited, and must be required so to do on written order of the commissioner made for good cause shown.
3. The security device must remain in effect until cancellation, which may occur only after thirty days' written notice to the commissioner. Cancellation does not affect any liability incurred or accrued during the period.
4. The security device must remain in place for at least five years after the licensee ceases money transmission operations in the state. However, notwithstanding this provision, the commissioner may permit the security device to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The commissioner may also permit a licensee to substitute a letter of credit or such other form of security device acceptable to the commissioner for the security device in place at the time the licensee ceases money transmission operations in the state.

13-09-06. Permissible investments and statutory trust.

1. Each licensee under this chapter must at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States.

This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the bond or other security devices posted by the licensee pursuant to section 13-09-05.

2. Permissible investments, even if commingled with other assets of the licensee, are deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

13-09-07. Application for license. Each application for a license under this chapter must be made in writing, and in a form prescribed by the commissioner. Each application must state or contain:

1. For all applicants:
 - a. The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records.
 - b. The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application.
 - c. A description of the activities conducted by the applicant and a history of operations.
 - d. A description of the business activities in which the applicant seeks to be engaged in the state.
 - e. A list identifying the applicant's proposed authorized delegates in the state, if any, at the time of the filing of the license application.
 - f. A sample authorized delegate contract, if applicable.
 - g. A sample form of payment instrument, if applicable.
 - h. The locations at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the state.
 - i. The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.
2. If the applicant is a corporation, the applicant must also provide:
 - a. The date of the applicant's incorporation and state of incorporation.
 - b. A certificate of good standing from the state in which the applicant was incorporated.
 - c. A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.

- d. The name, business and residence address, and employment history for the past five years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed hereunder.
 - e. The name, business and residence address, and employment history for the period five years prior to the date of the application of any key shareholder of the applicant.
 - f. The history of criminal convictions and material litigation for the five-year period before the date of the application of every executive officer or key shareholder of the applicant.
 - g. A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's form 10K reports filed with the United States securities and exchange commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision.
 - h. Copies of all filings, if any, made by the applicant with the United States securities and exchange commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.
- 3. If the applicant is not a corporation, the applicant must also provide:
 - a. The name, business and residence address, personal financial statement and employment history, for the past five years, of each principal of the applicant and the name, business and residence address, and employment history for the past five years of any other person or persons who will be in charge of the applicant's activities to be licensed under this chapter;
 - b. The place and date of the applicant's registration or qualification to do business in this state;
 - c. The history of criminal convictions and material litigation for the five-year period before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and
 - d. Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of

changes in financial position for the current year and, if available, for the immediately preceding two-year period.

4. For good cause shown, the commissioner may waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

13-09-08. Application fee. Each application must be accompanied by a nonrefundable investigation fee in the amount of four hundred fifty dollars and license fee of four hundred dollars. The license fee must be refunded if the application is denied. The commissioner shall deposit fees and costs collected by the department under this chapter in the department of financial institutions regulatory fund.

13-09-09. Issuance of license.

1. Upon the filing of a complete application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an onsite investigation of the applicant, the reasonable cost of which must be borne by the applicant. If the commissioner finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this chapter and has paid the required license fee, the commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state. If these requirements have not been met, the commissioner shall deny the application in writing, setting forth the reasons for the denial.
2. The commissioner shall approve or deny every application for an original license within one hundred twenty days from the date a complete application is submitted, which period may be extended by the written consent of the applicant. The commissioner shall notify the applicant of the date when the application is deemed complete.
3. Any applicant aggrieved by a denial issued by the commissioner under this chapter may at any time within thirty days from the date of receipt of written notice of the denial request a hearing before the commissioner.

13-09-10. Renewal of license and annual report.

1. A licensee under this chapter shall pay an annual renewal fee of four hundred fifty dollars which is not subject to refund.
2. The renewal fee must be accompanied by a report, in a form prescribed by the commissioner, which must include:
 - a. A copy of its most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

- b. For the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date, the licensee must provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding;
 - c. Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the commissioner on any other report required to be filed under this chapter;
 - d. A list of the licensee's permissible investments; and
 - e. A list of the locations, if any, within this state at which business regulated by this chapter is being conducted by either the licensee or its authorized delegates.
3. All licenses issued pursuant to this chapter expire on June thirtieth of each year. Applications for renewal must be submitted thirty days before expiration of the license. A licensee that has not filed a renewal report or paid its renewal fee by June thirtieth and has not been granted an extension of time to do so by the commissioner must have its license suspended. The licensee in such case has thirty days after its license is suspended in which to file a renewal report and pay the renewal fee, plus fifty dollars for each business day after suspension that the commissioner does not receive the renewal report and the renewal fee. For good cause, the commissioner may grant an extension of the renewal date or reduce or suspend the fifty dollars per day late filing fee.

13-09-11. Extraordinary reporting requirements. Within fifteen business days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing such event and its expected impact on the licensee's activities in the state:

- 1. Any material changes in information provided in a licensee's application or renewal report;
- 2. The filing for bankruptcy or reorganization by the licensee;
- 3. The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities;
- 4. Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities; and
- 5. Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

13-09-12. Changes in control of a licensee.

- 1. A licensee shall give the commissioner written notice of a proposed change of control within fifteen days after learning of the proposed change of control and request approval of the acquisition.

2. After review of a request for approval under subsection 1, the commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.
3. The commissioner shall approve a request for change of control under subsection 1 if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interests of the public will not be jeopardized by the change of control.
4. The following persons are exempt from the requirements of subsection 1, but the licensee shall notify the commissioner of a change of control:

 - a. A person that acts as a proxy for the sole purpose of voting at a designated meeting of the securityholders or holders of voting interests of a licensee or person in control of a licensee;
 - b. A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and
 - c. A person that the commissioner by rule or order exempts in the public interest.
5. Before filing a request for approval to acquire control, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction.

13-09-13. Examinations.

1. The commissioner may conduct an annual onsite examination of a licensee upon reasonable written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is in noncompliance with this chapter. Should the commissioner conclude that an onsite examination of a licensee is necessary, the licensee shall pay an examination or visitation fee and the commissioner shall charge for the actual cost of the examination or visitation at an hourly rate set by the commissioner which is sufficient to cover all reasonable expenses associated with the examination or visitation. The onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The commissioner, in lieu of an onsite examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the commissioner. The reasonable expenses incurred by the department, agencies of

another state, or an independent licensed or certified public accountant in making the examination or report must be borne by the licensee.

2. The commissioner may request financial data from a licensee in addition to that required under section 13-09-10, or conduct an onsite examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. When the commissioner examines a licensee's location within the state, the licensee shall pay all reasonably incurred costs of such examination.

13-09-14. Maintenance of records.

1. Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of five years and which are open to inspection by the commissioner:
 - a. A record or records of each payment instrument and stored value sold;
 - b. A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger must be posted at least monthly;
 - c. Bank statements and bank reconciliation records;
 - d. Records of outstanding payment instruments and stored value;
 - e. Records of each payment instrument and stored value paid within the five-year period;
 - f. A list of the names and addresses of all of the licensee's authorized delegates; and
 - g. Any other records the commissioner reasonably requires by rule.
2. Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section.
3. Records may be maintained at a location other than within this state so long as the records are made accessible to the commissioner on seven business days' written notice.

13-09-15. Authorized delegate contracts. Licenses desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract, which, for contracts entered into after the effective date of this Act, must provide the following:

1. That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

2. That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the commissioner; and
3. That licensees are subject to supervision and regulation by the commissioner.

13-09-16. Authorized delegate conduct.

1. An authorized delegate may not make a fraudulent or false statement or misrepresentation to a licensee or to the commissioner.
2. All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates must be strictly in accordance with the licensee's written procedures provided to the authorized delegate.
3. An authorized delegate must remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.
4. An authorized delegate is deemed to consent to the commissioner's inspection, with or without prior notice to the licensee or authorized delegates.
5. An authorized delegate is under a duty to act only as authorized under the contract with the licensee and this chapter and an authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the commissioner.
6. All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission must, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property is impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

13-09-17. Suspension or revocation of licenses. The commissioner may suspend or revoke a licensee's license if the commissioner finds that:

1. Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;
2. The licensee's net worth becomes inadequate and the licensee, after ten days' written notice from the commissioner, fails to take such steps as the commissioner deems necessary to remedy such deficiency;
3. The licensee knowingly violates any material provision of this chapter or any rule or order validly adopted by the commissioner under authority of this title;

4. The licensee is conducting its business in an unsafe or unsound manner;
5. The licensee is insolvent;
6. The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they become due;
7. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;
8. The licensee refuses to permit the commissioner to make any examination authorized by this chapter; or
9. The licensee willfully fails to make any report required by this chapter.

13-09-18. Suspension or revocation of authorized delegates.

1. The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:
 - a. The authorized delegate violates this chapter or a rule adopted or an order issued under this chapter;
 - b. The authorized delegate does not cooperate with an examination or investigation by the commissioner;
 - c. The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;
 - d. The authorized delegate is convicted of a violation of a state or federal antimoney laundering statute;
 - e. The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or
 - f. The authorized delegate is engaging in an unsafe or unsound practice.
2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, if any, the gravity of the violation of this chapter, and the previous conduct of the authorized delegate.
3. An authorized delegate may appeal from a suspension or revocation of designation as an authorized delegate by filing a written appeal with the commissioner within twenty days of the issuance of the order.

13-09-19. Orders to cease and desist.

1. If the commissioner determines that an unlicensed person, a licensee, or an authorized delegate has committed a violation of this chapter or of

a rule adopted or an order issued under this chapter, the commissioner may issue an order to cease and desist from the violation. The order becomes effective upon service.

2. The commissioner may issue an order against a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to section 13-09-18.
3. An order to cease and desist remains effective and enforceable pending the completion of any administrative proceeding.
4. The entity against which a cease and desist order has been issued may appeal the issuance of the cease and desist order by filing a written appeal with the commissioner within twenty days of the date the order is served on the licensee or delegate.
5. The commissioner may apply to the district court for an appropriate order to protect the public interest, including a temporary restraining order.

13-09-20. Consent orders. The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

13-09-21. Civil penalties. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty by filing a 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 financial institutions regulatory fund.

13-09-22. Criminal penalties.

1. A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter, or that intentionally makes a false entry or omits a material entry in such a record, is guilty of a class C felony.
2. Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful, is guilty of a class C felony.
3. An individual who knowingly engages in any activity for which a license is required under this chapter without being licensed under this chapter, is guilty of a class C felony.

13-09-23. Administrative procedures. All administrative proceedings under this chapter must be conducted in accordance with chapter 28-32.

13-09-24. Savings and transitional provisions. A license issued under the provisions of chapter 51-17 that is in effect immediately before the effective date of this Act remains in force as a license under this chapter until the license's expiration date. Thereafter, the licensee must be treated as if the licensee had applied for and had received a license under this chapter and is required to comply with the renewal requirements set forth in this chapter.

SECTION 3. REPEAL. Chapter 51-17 of the North Dakota Century Code is repealed.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, the sum of \$193,742 to the department of financial institutions for the purpose of defraying the expenses related to licensing and regulation of money transmitters, for the biennium beginning July 1, 2005, and ending June 30, 2007. The department of financial institutions may employ no more than one additional full-time equivalent position for the licensing and regulation of money transmitters.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act becomes effective on January 2, 2006.

Approved April 5, 2005
Filed April 6, 2005

DOMESTIC RELATIONS AND PERSONS

CHAPTER 129

SENATE BILL NO. 2117

(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

DISCRIMINATORY LABOR PRACTICES

AN ACT to amend and reenact sections 14-02.4-02, 14-02.4-14, 14-02.4-19, 14-02.4-20, and 14-02.4-23 of the North Dakota Century Code, relating to department of labor discriminatory practices proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Aggrieved person" includes any person who claims to have been injured by a discriminatory practice.
3. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
- ~~3.~~ 4. "Department" means the division of human rights within the labor department.
4. 5. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
- ~~5.~~ 6. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated

physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education;
- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

~~6-~~ 7. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

~~7-~~ 8. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.

~~8-~~ 9. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.

~~9-~~ 10. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

~~40-~~ 11. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.

~~44-~~ 12. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.

- ~~42-~~ 13. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.
- ~~43-~~ 14. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
- ~~44-~~ 15. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
16. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense by a person engaged in the provision of public accommodations.
- ~~45-~~ 17. "Reasonable accommodations" means accommodations by an employer that do not:
- Unduly disrupt or interfere with the employer's normal operations;
 - Threaten the health or safety of the individual with a disability or others;
 - Contradict a business necessity of the employer; or
 - Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
- ~~46-~~ 18. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- ~~47-~~ 19. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

SECTION 2. AMENDMENT. Section 14-02.4-14 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-14. Public accommodations - Discriminatory practices.

1. It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a

person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available because of the person's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

2. If a place of public accommodation has an architectural or communication barrier, the person engaged in the provision of public accommodations shall remove the barrier, if removal is readily achievable. If a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall make that person's goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those alternative methods are readily achievable.

SECTION 3. AMENDMENT. Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations.

1. Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.
2. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing.
3. If a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is ninety days from the date the department dismisses the complaint or issues a written notice to the complainant that administrative action on the complaint has concluded probable cause determination.
4. If a person elects to bring an action in the district court under this chapter, any pending administrative action based upon the same discriminatory acts must be dismissed immediately.

SECTION 4. AMENDMENT. Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the department, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging

in a discriminatory practice, the department or the court may enjoin the respondent from engaging in the unlawful practice and order ~~appropriate relief, which may include~~ temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date a minimally sufficient complaint was filed with the department or the court. Neither the department nor an administrative hearing officer may order compensatory or punitive damages under this chapter. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against reduce the backpay otherwise allowable. In any action or proceeding under this chapter, the court may grant the prevailing party a reasonable attorney's fee as part of the costs. If the court finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the court shall order the complainant to pay court costs and reasonable attorney's fees incurred by the respondent in responding to the allegation.

SECTION 5. AMENDMENT. Section 14-02.4-23 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-23. Complaints - Probable cause - Administrative hearing.

1. The department shall investigate complaints of alleged discriminatory practices. An aggrieved person may file a complaint with the department alleging the discriminatory practice. The department may file a complaint. A complaint must be in writing and in the form prescribed by the department.
2. ~~The~~ Unless the complaint is resolved through informal negotiations, conciliation, or is otherwise administratively closed, the department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint, the department shall promptly dismiss all or a portion of the complaint.
3. If the department determines that probable cause exists to believe that a discriminatory practice has occurred and is unable to resolve the complaint through informal negotiations or conciliation, the department shall issue a probable cause determination and provide for an administrative hearing in the manner provided in chapter 28-32 on the complaint.
4. A probable cause determination is prima facie evidence of a violation of this chapter.
5. If a claim filed by an aggrieved person proceeds to a hearing, the aggrieved person is a party in the hearing. The aggrieved person may be accompanied, advised, and represented throughout the proceeding by a representative chosen by the employee, including private counsel. Neither the department nor the attorney general may represent an aggrieved person at a hearing under this chapter. The attorney general, at the request of and on behalf of the department, may participate in the hearing and advocate in favor of the department's finding of probable cause.

6. If a claim filed by the department proceeds to a hearing, the department is a party in the hearing. The attorney general shall represent the department in any action or proceeding under this chapter.

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 130

HOUSE BILL NO. 1130

(Judiciary Committee)

(At the request of the Labor Commissioner)

DISCRIMINATORY PRACTICES ACTION RETALIATION PROHIBITED

AN ACT to amend and reenact section 14-02.4-18 of the North Dakota Century Code, relating to prohibiting retaliatory acts against participants in discriminatory practices actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-18 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-18. ~~Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals Retaliation prohibited.~~ It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, ~~or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination~~ unlawfully discriminate in violation of this chapter, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours any form of threats, retaliation, or discrimination against a person who has opposed any unlawful discriminatory practice or who, in good faith, has filed a complaint, testified, assisted, or participated in an investigation, proceeding, hearing, or litigation under this chapter.

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 131

HOUSE BILL NO. 1158

(Judiciary Committee)

(At the request of the Labor Commissioner)

LABOR DEPARTMENT HEARINGS AND REPRESENTATION

AN ACT to amend and reenact sections 14-02.5-31 and 14-02.5-36 of the North Dakota Century Code, relating to labor department administrative hearings and representation in enforcement actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.5-31 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-31. Administrative hearing.

1. If a timely election is not made under section 14-02.5-30, the department shall provide for a hearing on the charge. The attorney general, at the request of and on behalf of the department, may participate in and advocate in favor of the department's finding of probable cause. The aggrieved person may be represented by private counsel. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.
2. If a claim filed by an aggrieved person proceeds to a hearing, the aggrieved person is a party in the hearing. Neither the department nor the attorney general represents an aggrieved person at a hearing under this chapter. The attorney general, at the request of and on behalf of the department, may participate in the hearing and advocate in favor of the department's finding of probable cause. The aggrieved person may be represented by private counsel in any action or proceeding under this chapter.
3. If a claim filed by the department proceeds to a hearing, the department is a party in the hearing. The attorney general represents the department in any action or proceeding under this chapter.

SECTION 2. AMENDMENT. Section 14-02.5-36 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-36. Attorney general action for enforcement. If a timely election is made under section 14-02.5-30, the department shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief ~~on behalf for the benefit~~ of the aggrieved person in a district court. In any action for enforcement under this section, the attorney general represents the department. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved person may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 132

SENATE BILL NO. 2361

(Senators Dever, Erbele, Mathern)
(Representatives L. Meier, Sandvig, Sitte)

MARRIAGE LICENSE FEES

AN ACT to amend and reenact section 14-03-22 of the North Dakota Century Code, relating to marriage license fees; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-22 of 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.

1. For the issuance and filing of a marriage license, the recorder, unless the board of county commissioners designates a different official, shall collect ~~the sum a fee of six~~ up to thirty dollars from the party applying for the license. ~~The~~
2. In addition to the license fee provided for in subsection 1, the recorder, or designated official, shall ~~also~~ collect from the applicant a supplemental fee of ~~twenty-nine~~ thirty-five dollars for aid to victims of domestic violence through the domestic violence prevention fund in accordance with chapter 14-07.1.
3. For performing a marriage ceremony during regular courthouse hours, the recorder, or designated official, shall collect a fee of thirty dollars which is to be retained by the county. If the marriage ceremony is performed at a time other than during regular courthouse hours, the recorder, or designated official, may collect and retain a fee in an amount to be determined by the recorder, or designated official.
4. Except as provided in this section, all collected 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.
5. The recorder, or designated official, 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.

SECTION 2. LEGISLATIVE COUNCIL STUDY - MARRIAGE LAWS. The legislative council shall consider studying, during the 2005-06 interim, the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce-effects education. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 133

HOUSE BILL NO. 1348

(Representatives Delmore, DeKrey, Hawken)
(Senators Nelson, Trenbeath)

DOMESTIC VIOLENCE ARRESTS AND REPORTS

AN ACT to amend and reenact sections 14-07.1-10 and 14-07.1-12 of the North Dakota Century Code, relating to domestic violence arrest procedures and reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-10 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-10. Arrest procedures.

1. If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.
2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately; including to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer may determine which party has engaged in the most immediately significant aggression by considering certain factors, including the comparative severity of injuries involved; to determine whether to seek an arrest warrant and the likelihood of future harm.
3. An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

SECTION 2. AMENDMENT. Section 14-07.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If an officer determines through the course of an investigation that one of the individuals has engaged in the most immediately significant aggression, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 134

SENATE BILL NO. 2288

(Senators Fischer, Heitkamp, J. Lee)
(Representatives Devlin, Koppelman, Weisz)

CHILD SUPPORT INCOME WITHHOLDING

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to transfers of funds for payment of child support; to amend and reenact section 14-09-09.24 of the North Dakota Century Code, relating to income withholding for child support purposes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 or 3, 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. If an obligor, who would otherwise be subject to immediate income withholding under subsection 1 in at least one case in which services are being provided by a child support agency under title IV-D, demonstrates, and a child support agency finds there is good cause not to require immediate income withholding, the child support agency may enter into a written agreement with an obligor that provides for an alternate payment arrangement in lieu of immediate income withholding. Notwithstanding section 14-09-09.13, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this section. Any obligee aggrieved by a finding of a child support agency under this subsection may seek review of the finding under subsection 2 of section 50-09-14.
4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 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, if any; and
 - c. A requirement that the obligor keep the clerk and the public authority informed of any employment-related health insurance to which the obligor has access.
4. 5. 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 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 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Transfers of funds for payment of child support. If a court determines that income withholding under this chapter is inapplicable, ineffective, or insufficient to ensure monthly payment of child support as determined under section 14-09-09.30, a court may, and upon request of a child support agency shall, order an obligor to identify or establish a deposit account that allows for periodic transfers of funds for payment of child support and to execute any necessary agreement for preauthorized transfers of funds from the account to the state disbursement unit for the payment of child support. An obligor who fails to comply with this section or make sufficient funds available to satisfy any preauthorized transfer, or who stops payment or revokes authorization for any preauthorized transfer, may be punished for contempt of court.

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

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 135

HOUSE BILL NO. 1121

(Judiciary Committee)

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

UNIFORM PARENTAGE ACT

AN ACT to create and enact a new section to chapter 14-09, a new section to chapter 14-18, and chapter 14-20 of the North Dakota Century Code, relating to the termination of parental rights, gestational carriers, and the Uniform Parentage Act; to amend and reenact section 12.1-31-05, subsection 1 of section 14-15-05, subsection 1 of section 14-15-11, sections 14-18-01, 14-18-05, and 14-19-05, and subsection 5 of section 23-02.1-13 of the North Dakota Century Code, relating to gestational carriers and parentage determinations; to repeal sections 14-09-01, 14-09-02, and 14-09-03, chapter 14-17, and sections 14-18-02.1, 14-18-03, 14-18-04, 14-18-06, 14-18-07, 14-19-02, 14-19-03, 14-19-04, 14-19-09, and 14-19-10 of the North Dakota Century Code, relating to the legitimacy of children, the Uniform Parentage Act, the Uniform Status of Children of Assisted Conception Act, and paternity acknowledgment; and to provide for transition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-05. Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 14-18-01, or to relinquish her rights and duties as parent of a child conceived through assisted ~~conception~~ reproduction, as defined in section ~~14-18-04~~ 14-20-01.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Termination of parental rights - Duty of support. A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state. A termination of a child support obligation under this section does not relieve a parent of the duty to pay any unpaid child support.

SECTION 3. AMENDMENT. Subsection 1 of section 14-15-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless consent is not required under section 14-15-06, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:
 - a. The mother of the minor whether by birth or adoption;
 - b. The father of the minor, if:
 - (1) The minor is the father's child by adoption, or the father has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought; or
 - (2) The person is presumed to be the biological father of the minor under subsection 1 of section ~~14-17-04~~ 14-20-10, provided the nonexistence of the father and child relationship between them has not been judicially determined;
 - c. Any individual lawfully entitled to custody of the minor or empowered to consent;
 - d. The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not empowered to consent to the adoption;
 - e. The minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and
 - f. The spouse of the minor to be adopted.

SECTION 4. AMENDMENT. Subsection 1 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to the department; any agency or individual whose consent to the adoption is required by this chapter but who has not consented; an individual whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and any individual identified by the court as a biological parent or a possible biological parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under ~~sections~~ section 27-20-45 ~~and 14-17-24~~, unless the individual has relinquished parental rights or the individual's parental rights have been previously terminated by a court. The notice to the department must be accompanied by a copy of the petition.
- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.

SECTION 5. AMENDMENT. Section 14-18-01 of the North Dakota Century Code is amended and reenacted as follows:

14-18-01. Definitions. As used in this chapter:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse but does not include a pregnancy resulting from the insemination of an egg of a wife using her husband's sperm.
2. ~~"Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include an individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.~~
3. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
4. 3. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 6. AMENDMENT. Section 14-18-05 of the North Dakota Century Code is amended and reenacted as follows:

14-18-05. Surrogate agreements. Any agreement in which a woman agrees to become a surrogate or to relinquish that woman's rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter ~~14-17~~ 14-20.

SECTION 7. A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

Gestational carrier agreements. A child born to a gestational carrier is a child of the intended parents for all purposes and is not a child of the gestational carrier and the gestational carrier's husband, if any.

SECTION 8. AMENDMENT. Section 14-19-05 of the North Dakota Century Code is amended and reenacted as follows:

14-19-05. Filing of acknowledgment. An acknowledgment of paternity made under this chapter ~~14-20~~ must be filed with the state department of health on a form approved by the department, which must include the social security number of the parents and any other information required by the secretary of the United States department of health and human services. Upon request of the department, the state department of health shall furnish a certified copy of an acknowledgment of paternity to the department.

SECTION 9. Chapter 14-20 of the North Dakota Century Code is created and enacted as follows:

14-20-01. (101) Short title. This chapter may be cited as the Uniform Parentage Act.

14-20-02. (102) Definitions. In this chapter:

1. "Acknowledged father" means a man who has established a father-child relationship under sections 14-20-11 through 14-20-24.
2. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
3. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:
 - a. A presumed father;
 - b. A man whose parental rights have been terminated or declared not to exist; or
 - c. A male donor.
4. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:
 - a. Intrauterine insemination;
 - b. Donation of eggs;
 - c. Donation of embryos;
 - d. In vitro fertilization and transfer of embryos; and
 - e. Intracytoplasmic sperm injection.
5. "Child" means an individual of any age whose parentage may be determined under this chapter.
6. "Commence" means to file the initial pleading seeking an adjudication of parentage in the district court of this state.
7. "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under sections 14-20-11 through 14-20-24 or adjudication by the court.
8. "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:
 - a. A husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;
 - b. A woman who gives birth to a child by means of assisted reproduction;

- c. A parent under sections 14-20-59 through 14-20-65; or
 - d. An individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.
- 9. "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
- 10. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
 - a. Deoxyribonucleic acid; and
 - b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- 11. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
- 12. "Man" means a male individual of any age.
- 13. "Parent" means an individual who has established a parent-child relationship under section 14-20-07.
- 14. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
- 15. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:
 - a. The likelihood that the tested man is the father, based on genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and
 - b. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
- 16. "Presumed father" means a man who, by operation of law under section 14-20-10, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
- 17. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

18. "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.
19. "Signatory" means an individual who authenticates a record and is bound by its terms.
20. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
21. "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 child support obligors and their income and assets.

14-20-03. (103) Scope - Choice of law.

1. This chapter applies to determination of parentage in this state.
2. The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:
 - a. The place of birth of the child; or
 - b. The past or present residence of the child.
3. This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

14-20-04. (104) Courts of this state. The district court is authorized to adjudicate parentage under this chapter.

14-20-05. (105) Protection of participants. Proceedings under this chapter are subject to other law of this state governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's daycare facility and school.

14-20-06. (106) Determination of maternity. Provisions of this chapter relating to determination of paternity apply to determinations of maternity.

14-20-07. (201) Establishment of parent-child relationship.

1. The mother-child relationship is established between a woman and a child by:
 - a. The woman's having given birth to the child;

- b. An adjudication of the woman's maternity; or
 - c. Adoption of the child by the woman.
- 2. The father-child relationship is established between a man and a child by:
 - a. An un rebutted presumption of the man's paternity of the child under section 14-20-10;
 - b. An effective acknowledgment of paternity by the man under sections 14-20-11 through 14-20-24, unless the acknowledgment has been rescinded or successfully challenged;
 - c. An adjudication of the man's paternity;
 - d. Adoption of the child by the man; or
 - e. The man's having consented to assisted reproduction by a woman under sections 14-20-59 through 14-20-65 which resulted in the birth of the child.

14-20-08. (202) No discrimination based on marital status. A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

14-20-09. (203) Consequences of establishment of parentage. Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

14-20-10. (204) Presumption of paternity.

- 1. A man is presumed to be the father of a child if:
 - a. He and the mother of the child are married to each other and the child is born during the marriage;
 - b. He and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
 - c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
 - d. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

- (1) The assertion is in a record filed with the state department of health;
 - (2) He agreed to be and is named as the child's father on the child's birth certificate; or
 - (3) He promised in a record to support the child as his own; or
 - e. For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.
 2. A presumption of paternity established under this section may be rebutted only by an adjudication under sections 14-20-36 through 14-20-58.

14-20-11. (301) Acknowledgment of paternity. The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

14-20-12. (302) Execution of acknowledgment of paternity.

1. An acknowledgment of paternity must:
 - a. Be in a record;
 - b. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;
 - c. State that the child whose paternity is being acknowledged:
 - (1) Does not have a presumed father, or has a presumed father whose full name is stated; and
 - (2) Does not have another acknowledged or adjudicated father;
 - d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
 - e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after one year.
2. An acknowledgment of paternity is void if it:
 - a. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the state department of health;
 - b. States that another man is an acknowledged or adjudicated father; or
 - c. Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

3. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

14-20-13. (303) Denial of paternity. A presumed father may sign a denial of his paternity. The denial is valid only if:

1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to section 14-20-15;
2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and
3. The presumed father has not previously:
 - a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to section 14-20-17 or successfully challenged pursuant to section 14-20-18; or
 - b. Been adjudicated to be the father of the child.

14-20-14. (304) Rules for acknowledgment and denial of paternity.

1. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.
2. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
3. Subject to subsection 1, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the state department of health, whichever occurs later.
4. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter.
5. An acknowledgment of paternity or denial of paternity may be completed for a child who was not born in this state.

14-20-15. (305) Effect of acknowledgment or denial of paternity.

1. Except as otherwise provided in sections 14-20-17 and 14-20-18, a valid acknowledgment of paternity filed with the state department of health is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and must be recognized as a basis for a support order in any proceeding to establish, enforce, or modify a support order.
2. Except as otherwise provided in sections 14-20-17 and 14-20-18, a valid denial of paternity by a presumed father filed with the state department of health in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

14-20-16. (306) No filing fee. The state department of health may not charge for filing an acknowledgment of paternity or denial of paternity.

14-20-17. (307) Proceeding for rescission. A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty days after the effective date of the acknowledgment or denial, as provided in section 14-20-14; or
2. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

14-20-18. (308) Challenge after expiration of period for rescission.

1. After the period for rescission under section 14-20-17 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:
 - a. On the basis of fraud, duress, or material mistake of fact; and
 - b. Within one year after the acknowledgment or denial is filed with the state department of health.
2. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

14-20-19. (309) Procedure for rescission or challenge.

1. Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.
2. For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial, effective upon the filing of the document with the state department of health.
3. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.
4. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under sections 14-20-36 through 14-20-58.
5. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall order the state department of health to amend the birth record of the child, if appropriate.

14-20-20. (310) Ratification barred. A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

14-20-21. (311) Full faith and credit. A court of this state shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

14-20-22. (312) Forms for acknowledgment and denial of paternity.

- 1.** To facilitate compliance with sections 14-20-11 through 14-20-24, the state department of health shall prescribe forms for the acknowledgment of paternity and the denial of paternity.
- 2.** A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

14-20-23. (313) Release of information. The state department of health may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and appropriate state or federal agencies of this or another state.

14-20-24. (314) Adoption of rules. The state department of health may adopt rules to implement sections 14-20-11 through 14-20-23.

14-20-25. (501) Scope. Sections 14-20-25 through 14-20-35 govern genetic testing of an individual to determine parentage, whether the individual:

- 1.** Voluntarily submits to testing; or
- 2.** Is tested pursuant to an order of the court or a support enforcement agency.

14-20-26. (502) Order for testing.

- 1.** Except as otherwise provided in sections 14-20-25 through 14-20-58, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
 - a.** Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals;
or
 - b.** Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
- 2.** A support enforcement agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.
- 3.** If a request for genetic testing of a child is made before birth, the court or support enforcement agency may not order in utero testing.

4. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

14-20-27. (503) Requirements for genetic testing.

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
 - a. The American association of blood banks, or a successor to its functions;
 - b. The American society for histocompatibility and immunogenetics, or a successor to its functions; or
 - c. An accrediting body designated by the federal secretary of health and human services.
2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the data bases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
 - a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory.
 - b. The individual objecting to the testing laboratory's initial choice shall:
 - (1) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - (2) Engage another testing laboratory to perform the calculations.
 - c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.
4. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under section 14-20-29, an individual who has been tested may be required to submit to additional genetic testing.

14-20-28. (504) Report of genetic testing.

1. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of sections 14-20-25 through 14-20-35 is self-authenticating.
2. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
 - a. The names and photographs of the individuals whose specimens have been taken;
 - b. The names of the individuals who collected the specimens;
 - c. The places and dates the specimens were collected;
 - d. The names of the individuals who received the specimens in the testing laboratory; and
 - e. The dates the specimens were received.

14-20-29. (505) Genetic testing results - Rebuttal.

1. Under this chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with sections 14-20-25 through 14-20-35 and the results disclose that:
 - a. The man has at least a ninety-nine percent probability of paternity, using a prior probability of five-tenths, as calculated by using the combined paternity index obtained in the testing; and
 - b. A combined paternity index of at least one hundred to one.
2. A man identified under subsection 1 as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of sections 25 through 35 of this Act which:
 - a. Excludes the man as a genetic father of the child; or
 - b. Identifies another man as the possible father of the child.
3. Except as otherwise provided in section 14-20-34, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

14-20-30. (506) Costs of genetic testing.

1. Subject to assessment of costs under sections 14-20-36 through 14-20-58, the cost of initial genetic testing must be advanced:
 - a. By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;
 - b. By the individual who made the request;

- c. As agreed by the parties; or
 - d. As ordered by the court.
- 2. In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

14-20-31. (507) Additional genetic testing. The court or the support enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under section 14-20-29, the court or agency may not order additional testing unless the party provides advance payment for the testing.

14-20-32. (508) Genetic testing when specimens not available.

- 1. Subject to subsection 2, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:
 - a. The parents of the man;
 - b. Brothers and sisters of the man;
 - c. Other children of the man and their mothers; and
 - d. Other relatives of the man necessary to complete genetic testing.
- 2. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

14-20-33. (509) Deceased individual. For good cause shown, the court may order genetic testing of a deceased individual.

14-20-34. (510) Identical brothers.

- 1. The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
- 2. If each brother satisfies the requirements as the identified father of the child under section 14-20-29 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

14-20-35. (511) Confidentiality of genetic testing. The report of genetic testing for parentage is confidential. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen is subject to section 12.1-13-01.

14-20-36. (601) Proceeding authorized. A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the North Dakota Rules of Civil Procedure.

14-20-37. (602) Standing to maintain proceeding. Subject to sections 14-20-11 through 14-20-24 and sections 14-20-42 and 14-20-44, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The support enforcement agency;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

14-20-38. (603) Parties to proceeding. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

14-20-39. (604) Personal jurisdiction.

1. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.
2. A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 14-12.2-04 are fulfilled.
3. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

14-20-40. (605) Venue. Venue for a proceeding to adjudicate parentage is in the county of this state in which:

1. The child resides or is found;
2. The respondent resides or is found if the child does not reside in this state; or
3. A proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

14-20-41. (606) No limitation - Child having no presumed, acknowledged, or adjudicated father. A proceeding to adjudicate the parentage of

a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding;
or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

14-20-42. (607) Limitation - Child having presumed father.

1. Except as otherwise provided in subsection 2, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.
2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:
 - a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
 - b. The presumed father never openly held out the child as his own.
3. For purposes of this section and section 14-20-43, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action.

14-20-43. (608) Authority to deny motion for genetic testing.

1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:
 - a. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
 - b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.
2. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:
 - a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
 - b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;

- c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
 - d. The nature of the relationship between the child and the presumed or acknowledged father;
 - e. The age of the child;
 - f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
 - g. The nature of the relationship between the child and any alleged father;
 - h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and
 - i. Other factors that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
3. In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.
4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
5. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

14-20-44. (609) Limitation - Child having acknowledged or adjudicated father.

1. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under section 14-20-17 or 14-20-18.
2. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of a paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.
3. A proceeding under this section is subject to the application of the principles of estoppel established in section 14-20-43.

14-20-45. (610) Joinder of proceedings.

1. Except as otherwise provided in subsection 2, a proceeding to adjudicate parentage may be joined with a proceeding for adoption.

termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.

2. A respondent may not join a proceeding described in subsection 1 with a proceeding to adjudicate parentage brought under chapter 14-12.2.

14-20-46. (611) Proceeding before birth. A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by section 14-20-26, collection of specimens for genetic testing.

14-20-47. (612) Child as party - Representation.

1. A minor child is a permissible party, but is not a necessary party to a proceeding under sections 14-20-36 through 14-20-58.
2. The court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the court finds that the interests of the child are not adequately represented.

14-20-48. (621) Admissibility of results of genetic testing - Expenses.

1. Except as otherwise provided in subsection 3, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
 - a. Voluntarily or pursuant to an order of the court or a support enforcement agency; or
 - b. Before or after the commencement of the proceeding.
2. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.
3. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:
 - a. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
 - b. Pursuant to an order of the court under section 14-20-26.

4. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:
 - a. The amount of the charges billed; and
 - b. That the charges were reasonable, necessary, and customary.

14-20-49. (622) Consequences of declining genetic testing.

1. An order for genetic testing is enforceable by contempt.
2. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.
3. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

14-20-50. (623) Admission of paternity authorized.

1. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
2. If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

14-20-51. (624) Temporary order.

1. In a proceeding under sections 14-20-36 through 14-20-58, the court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
 - a. A presumed father of the child;
 - b. Petitioning to have his paternity adjudicated;
 - c. Identified as the father through genetic testing under section 14-20-29;
 - d. An alleged father who has declined to submit to genetic testing;
 - e. Shown by clear and convincing evidence to be the father of the child; or
 - f. The mother of the child.

2. A temporary order may include provisions for custody and visitation as provided by other law of this state.

14-20-52. (631) Rules for adjudication of paternity. The court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under section 14-20-29 must be adjudicated the father of the child.
3. If the court finds that genetic testing under section 14-20-29 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

14-20-53. (632) Jury prohibited. The court, without a jury, shall adjudicate paternity of a child.

14-20-54. (633) Hearings - Inspection of records.

1. On request of a party and for good cause shown, the court may close a proceeding under sections 14-20-36 through 14-20-58.
2. A final order in a proceeding under sections 14-20-36 through 14-20-58 is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the court for good cause.

14-20-55. (634) Order on default. The court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the court to be the father of a child.

14-20-56. (635) Dismissal for want of prosecution. The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

14-20-57. (636) Order adjudicating parentage.

1. The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

2. An order adjudicating parentage must identify the child by name and date of birth.
3. The order must include the social security numbers of the child and the individuals determined to be the child's parents.
4. The order may contain any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy and confinement, custody of the child, visitation with the child, and furnishing of bond or other security for payment of support. A support order must be for a monthly payment in an amount consistent with the guidelines established under section 14-09-09.7 and must be subject to section 14-09-08.1. All remedies for the enforcement of support, custody, and visitation orders apply. The court has continuing jurisdiction to modify an order for future support and, subject to section 14-09-09.6, custody of and visitation with the child.
5. Except as otherwise provided in subsection 6, the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under sections 14-20-36 through 14-20-58. The court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
6. The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.
7. On request of a party and for good cause shown, the court may order that the name of the child be changed.
8. If the order of the court is at variance with the child's birth certificate, the court shall order the state department of health to issue an amended birth registration.
9. An order adjudicating parentage must be filed with the state department of health.

14-20-58. (637) Binding effect of determination of parentage.

1. Except as otherwise provided in subsection 2, a determination of parentage is binding on:
 - a. All signatories to an acknowledgment or denial of paternity as provided in sections 14-20-11 through 14-20-24; and
 - b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 14-12.2-04.
2. A child is not bound by a determination of parentage under this chapter unless:
 - a. The determination was based on an unrestricted acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

- b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
 - c. The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.
 - 3. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of section 14-12.2-04, and the final order:
 - a. Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or
 - b. Provides for support of the child, custody of the child, or visitation with the child by the husband unless paternity is specifically disclaimed in the order.
 - 4. Except as otherwise provided in subsection 2, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
 - 5. A party to an adjudication of paternity may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review.

14-20-58.1. Liability for collection of support.

- 1. As used in this section, "former parent" means an acknowledged father who successfully rescinded or challenged an acknowledgment of paternity under this chapter, a presumed father whose parentage was successfully rebutted under this chapter, or an adjudicated father whose parentage was disestablished after an order issued under this chapter was vacated.
- 2. The state is not liable for child support that was collected from or on behalf of a former parent and disbursed to an obligee as defined in section 14-09-09.10.
- 3. The state is not liable for child support that was collected from or on behalf of a former parent and retained by the state unless ordered by a court after being presented with genetic test results that would otherwise be admissible under this chapter showing that the former parent is not the genetic parent of the child.

14-20-59. (701) Scope. Sections 14-20-59 through 14-20-65 do not apply to the birth of a child conceived by means of sexual intercourse.

14-20-60. (702) Parental status of donor. A donor is not a parent of a child conceived by means of assisted reproduction.

14-20-61. (703) Paternity of child of assisted reproduction. A man who provides sperm for, or consents to, assisted reproduction by a woman as provided in

section 14-20-62 with the intent to be the parent of her child, is a parent of the resulting child. Parentage of a child born to a gestational carrier is governed by chapter 14-18.

14-20-62. (704) Consent to assisted reproduction.

1. Consent by a woman, and a man who intends to be a parent of a child born to the woman by assisted reproduction, must be in a record signed by the woman and the man. This requirement does not apply to a donor.
2. Failure by a man to sign a consent required by subsection 1, before or after birth of the child, does not preclude a finding of paternity if the woman and the man, during the first two years of the child's life, resided together in the same household with the child and openly held out the child as their own.

14-20-63. (705) Limitation on husband's dispute of paternity.

1. Except as otherwise provided in subsection 2, the husband of a wife who gives birth to a child by means of assisted reproduction may not challenge his paternity of the child unless:
 - a. Within two years after learning of the birth of the child he commences a proceeding to adjudicate his paternity; and
 - b. The court finds that he did not consent to the assisted reproduction, before or after birth of the child.
2. A proceeding to adjudicate paternity may be maintained at any time if the court determines that:
 - a. The husband did not provide sperm for, or before or after the birth of the child consent to, assisted reproduction by his wife;
 - b. The husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and
 - c. The husband never openly held out the child as his own.
3. The limitation provided in this section applies to a marriage declared invalid after assisted reproduction.

14-20-64. (706) Effect of dissolution of marriage or withdrawal of consent.

1. If a marriage is dissolved before placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.
2. The consent of a woman or a man to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child.

14-20-65. (707) Parental status of deceased individual. If an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child.

14-20-66. (901) Uniformity of application and construction. In applying and construing the chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. 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 a 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;~~
 - e. 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.~~ c. A court or other entity of competent jurisdiction has adjudicated paternity.

SECTION 11. REPEAL. Sections 14-09-01, 14-09-02, and 14-09-03, chapter 14-17, and sections 14-18-02.1, 14-18-03, 14-18-04, 14-18-06, 14-18-07, 14-19-02, 14-19-03, 14-19-04, 14-19-09, and 14-19-10 of the North Dakota Century Code are repealed.

SECTION 12. TRANSITION. A proceeding to adjudicate parentage which was commenced before the effective date of this chapter is governed by the law in effect at the time the proceeding was commenced.

EDUCATION

CHAPTER 136

HOUSE BILL NO. 1306

(Representatives Wald, Haas, N. Johnson)
(Senators Urlacher, Wardner)

STARK COUNTY LAND SALE

AN ACT to amend and reenact section 1 of chapter 188 of the 1987 Session Laws, relating to the sale of certain state lands by the board of university and school lands to Stark County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1 of chapter 188 of the 1987 Session Laws is amended and reenacted as follows:

SECTION 1. The board of university and school lands is authorized to sell and convey the following property to Stark County, North Dakota:

A tract of land comprising approximately one hundred seventy acres, known as the "State Second Addition", and lying in the southwest and northwest quarters of section five, township one hundred thirty-nine, range ninety-six, Stark County, North Dakota- in Section 5, Township 139 North, Range 96 West of the 5th p.m., Stark County, North Dakota, more particularly described as follows, to wit:

Beginning at the southwest corner of Section 5, an iron pin found; thence North on an azimuth of 359 degrees 59 minutes 26 seconds, 272.81 feet to a point on the northerly 120 foot right-of-way line of Old U.S. Highway No. 10, and the True Point of Beginning; thence continuing North along the west line of said Section 5 on an azimuth of 359 degrees 59 minutes 26 seconds a distance of 5020.46 feet to a point on the southerly I-94 right-of-way fence; thence easterly along said right-of-way on an azimuth of 089 degrees 55 minutes 28 seconds a distance of 503.47 feet to the westerly 100 foot right-of-way line of I-94 Business Loop [F-709 (1)]; thence southeasterly along said westerly 100 foot right-of-way line on an azimuth of 155 degrees 12 minutes 00 seconds (Base Bearing) a distance of 3134.12 feet to T.S. (Sta. 55+56.2); thence along a 400 foot spiral curve with a Sc 6 degree Long Chord Azimuth of 153 degrees 23 minutes, Long Chord distance 410.27 feet to S.C. (Sta. 59+56.2); thence continuing southeasterly along said right-of-way on the outside of 100 foot right-of-way of a 3 degree curve to the left on a Long Chord Azimuth of 127 degrees 57 minutes 26 seconds, a Long Chord distance of 1456.57 feet (Arc Length of 1490.48 feet) to the intersection of the northerly 130 foot right-of-way line of Old U.S. Highway No. 10; thence southwesterly along said 130 foot right-of-way of a 1 degree curve on a Long Chord Azimuth of 255 degrees 34 minutes 52 seconds, Long Chord distance of 403.31 feet (Arc length 403.40 feet), (P.C. Sta. of 438+20.1); thence southeasterly on an azimuth of 163 degrees 36 minutes 32 seconds, 30 feet to a point on the northerly

100 foot right-of-way; thence southwesterly along said 100 foot right-of-way on an azimuth of 253 degrees 36 minutes 32 seconds, 1420.08 feet to a point where the right-of-way jogs from 100 feet to 120 feet; thence northwesterly on an azimuth of 343 degrees 36 minutes 32 seconds a distance of 20.00 feet; thence southwesterly along said 120 foot right-of-way on an azimuth of 253 degrees 36 minutes 32 seconds a distance of 1142.30 feet to the beginning of a 1 degree curve to the right (Sta. 412+57.7); thence along a Long Chord Azimuth of 255 degrees 13 minutes 12 seconds a Long Chord distance of 315.45 feet (Arc Length 315.50 feet) to the Point of Beginning.

Tract contains 181.8 Acres.

The property must be sold at a price agreeable to both parties but not less than the fair market value thereof, based upon two independent appraisals. The state shall reserve all mineral rights in and under the premises conveyed as are now held by the state. The sale of the property to Stark County by the board of university and school lands is deemed to be the best possible return to the state of North Dakota as provided in section 2 of chapter 203 of the 1985 Session Laws of North Dakota.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 137

SENATE BILL NO. 2097

(Education Committee)

(At the request of the Board of University and School Lands)

STATE MINERAL LEASING

AN ACT to amend and reenact section 15-05-18 of the North Dakota Century Code, relating to mineral leasing activities of the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-05-18 of the North Dakota Century Code is amended and reenacted as follows:

15-05-18. Leases of ~~gravel, scoria, sand, and gravel~~, construction aggregate, and other construction minerals. Notwithstanding the provisions of chapter 38-09, the board of university and school lands may enter into mineral leasing agreements for ~~gravel, scoria, sand and gravel~~, road material, building stone, and construction aggregate or colloidal or other clays under rules adopted by the board. No lease under this section may be issued by the board for less than fair market value, nor may any lease under this section be issued for a period of more than five years.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 138

SENATE BILL NO. 2095

(Political Subdivisions Committee)

(At the request of the Board of University and School Lands)

TRUST FUND PROPERTY SALE NOTICE

AN ACT to amend and reenact section 15-08-18.1 of the North Dakota Century Code, relating to notice to county auditors when trust fund property is sold by contract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-08-18.1 of the North Dakota Century Code is amended and reenacted as follows:

15-08-18.1. Taxation of public lands sold on contract - Cancellation.

When real property owned by the state of North Dakota as trustee of permanent school funds for the use and benefit thereof is sold upon contract providing for a future conveyance, the department or office making such contract on the part of the vendor shall immediately notify the county auditor of the county wherein the real property is situated, of the making of the contract, the description of the real property therein described, and the name of the vendee. The real property must be put upon the tax rolls of the county and assessed and the taxes must be levied thereon, based upon its taxable value on the first day of February next succeeding the date of the contract. ~~Failure to notify the county auditor according to the provisions of this section shall make the commissioner of university and school lands personally liable in a civil action to be brought by the state's attorney of the county wherein the land lies against the commissioner for the amount of the taxes that would have been levied had the notice been given as herein provided.~~ In the event that the contract is canceled by the vendor and not redeemed, the taxes must be immediately canceled and stricken from the tax rolls by the county auditor upon notice of such expiration of the period of redemption being given reported to the county auditor by the vendor.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 139

SENATE BILL NO. 2034

(Legislative Council)
(Higher Education Committee)

HIGHER EDUCATION FUNDS APPROPRIATION

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

15-10-12. (Effective through June 30, 2005 2007) Board may accept gifts and bequests - Deposit and appropriation of institutional funds. Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

(Effective after June 30, 2005 2007) Board may accept gifts and bequests - Deposit of funds. The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its

control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

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

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 140

HOUSE BILL NO. 1271

(Representatives R. Kelsch, Carlisle, Maragos)
(Senators Bercier, Dever, Thane)

VETERAN'S DEPENDENT TUITION WAIVERS

AN ACT to amend and reenact section 15-10-18.2 of the North Dakota Century Code, relating to tuition waivers for dependents of veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18.2. Definitions.

1. "Dependent" for purposes of section 15-10-18.3 means ~~any~~:
 - a. A child, stepchild, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action; or
 - b. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent has been a resident of this state and was a resident of this state at the time of death or determination of total disability of the veteran.
2. "Resident veteran" means a veteran who:
 - a. Was born in and lived in this state until entrance into the armed forces of the United States;
 - b. Was born in, but was temporarily living outside this state, not having abandoned residence therein prior to entrance into the armed forces of the United States;
 - c. Was born elsewhere but had resided within this state for at least six months prior to entrance into military service and had prior to or during such six-month period:
 - (1) Registered for voting, or voted in this state;
 - (2) Being an unemancipated minor during such period of residence, had lived with a parent or person standing in loco

parentis who had acquired a residence as set forth in this section; or

- (3) If not registered for voting in this state, not registered for voting in another state; or
- d. Has been a resident of this state for the ten years prior to the request for tuition waiver.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 141

SENATE BILL NO. 2079

(Education Committee)

(At the request of the State Board of Higher Education)

PUBLIC SAFETY PERSONNEL DEPENDENT TUITION

AN ACT to amend and reenact sections 15-10-18.3 and 15-10-18.5 of the North Dakota Century Code, relating to free higher education tuition and fees for dependents of veterans and survivors of firefighters, emergency medical services personnel, and peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18.3 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18.3. Free tuition in North Dakota institutions of higher education.

Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any undergraduate degree or certificate program of a North Dakota state-supported state institution of higher education or state-supported career and technical education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, ~~except those charged to retire outstanding bonds~~; provided, however, that the bachelor's degree or certificate of completion is earned within a ~~thirty-six month~~ forty-five-month or ~~eight-semester~~ ten-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, ~~there shall be no removal the dependent may not be disqualified from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.~~

SECTION 2. AMENDMENT. Section 15-10-18.5 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter, emergency medical services personnel, or peace officer. ~~Should~~ If a firefighter, an emergency medical services personnel as defined under section 23-27-04.3, or a peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any undergraduate degree or certificate program of a North Dakota state-supported state institution of higher education or state-supported career and technical education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds; provided, however, that the bachelor's degree or certificate of completion is earned within a thirty-six month forty-five-month or ~~eight-semester~~ ten-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved March 21, 2005

Filed March 21, 2005

CHAPTER 142

SENATE BILL NO. 2076

(Education Committee)

(At the request of the State Board of Higher Education)

RESIDENT STUDENT FOR TUITION PURPOSES

AN ACT to amend and reenact subsection 2 of section 15-10-19.1 of the North Dakota Century Code, relating to the definition of resident student for tuition purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-10-19.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A "resident student" for tuition purposes means:
 - a. A person whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
 - b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the beginning of the academic term;
 - c. A person who graduated from a North Dakota high school;
 - d. A full-time active duty member of the armed forces ~~assigned to a military installation in this state~~ or a member of a North Dakota national guard unit;
 - e. A spouse or dependent of a full-time active duty member of the armed forces ~~assigned to a military installation in this state or a member of a North Dakota national guard unit~~ or of an employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes; and
 - f. A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term; or

- g. A child, spouse, widow, or widower of a veteran as defined in section 37-01-40 who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 143

SENATE BILL NO. 2078

(Education Committee)

(At the request of the State Board of Higher Education)

TECHNOLOGY AND TEACHER LOAN PROGRAMS

AN ACT to amend and reenact sections 15-10-37 and 15-10-38 of the North Dakota Century Code, relating to eligibility for loans under the technology occupations student loan program and eligibility for loan forgiveness under the teacher shortages loan forgiveness program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-37 of the North Dakota Century Code is amended and reenacted as follows:

15-10-37. Technology occupations student loan program.

1. The state board of higher education shall administer a technology occupations student loan program that encourages college students to pursue technology-based studies, to participate in technology internship programs, and to remain in the state after graduation. The board shall adopt rules to implement the program, including internship requirements, guidelines to determine which technology-related courses of study are eligible under the program, and standards for eligibility.
2. ~~Students~~ Graduates of board-approved colleges may apply for the technology occupations student loan program. To be eligible to receive student loan grants under the program, the applicant:
 - a. Must have graduated from a board-approved college;
 - b. Must have successfully completed the board-approved technology-related courses;
 - c. Must have maintained at least a ~~3.0~~ 2.5 grade point average, based on a 4.0 grading system, at a board-approved college;
 - d. ~~Must have actively participated in a board-approved technology internship with a business in the state;~~
 - e. Must have a student loan with the Bank of North Dakota or other participating lender;
 - f. e. Following graduation must be employed in the state in a board-approved technology occupation; and
 - g. f. Must have met and shall continue to meet any requirements established by rule.
3. The state board of higher education shall distribute student loan grants directly to the Bank of North Dakota to repay outstanding student loan

principal balances for eligible applicants. The maximum student loan grant amount for which an applicant may qualify is one thousand dollars per twelve months of employment for a maximum of five years year and a total of five thousand dollars, or a lesser amount established by rule adopted by the state board of higher education.

SECTION 2. AMENDMENT. Section 15-10-38 of the North Dakota Century Code is amended and reenacted as follows:

15-10-38. Loans - Teacher shortages - Loan forgiveness.

1. The state board of higher education shall administer a student loan forgiveness program for individuals teaching at grade levels or in content areas identified as having a teacher shortage. The board shall adopt rules to implement the program.
2. The superintendent of public instruction shall annually identify the grade levels and content areas in which a teacher shortage exists.
3. To be eligible for loan forgiveness under this section, an individual:
 - a. Must have been admitted as a full-time student in a teacher preparation program, with the declared intention to teach at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists; and
 - b. Must have obtained a student loan.
4. An individual may receive up to one thousand dollars per year and a maximum of five thousand dollars, or a lesser amount established by rule adopted by the state board of higher education under this section.
5. The board shall consider all applications under this section in chronological order.
6. Upon notification that the individual has completed a full year of teaching in a school district or nonpublic school in this state at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists, the board shall distribute funds directly to the Bank of North Dakota to repay outstanding loan principal balances for eligible applicants.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 144**HOUSE BILL NO. 1364**

(Representatives Grande, Iverson, Sitte)
(Senators Freborg, Hacker)

**HIGHER EDUCATION INSTRUCTOR ENGLISH
PROFICIENCY**

AN ACT relating to English pronunciation by faculty and teaching assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. FACULTY - ENGLISH PRONUNCIATION - POLICY - REPORT. The state board of higher education shall create a policy for all institutions under its control, relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. Before July 1, 2006, the state board of higher education shall report to the legislative council regarding implementation of the policy.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 145

HOUSE BILL NO. 1397

(Representatives Iverson, Headland, Mueller, Thoreson)
(Senators Flakoll, Klein)

VETERINARY MEDICAL EDUCATION PROGRAM

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to opportunities for the enrollment of students in a veterinary medical education program; to provide an appropriation; and to provide for continuation of program funding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Veterinary medical education program - Kansas state university - Contract.

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member from the department of veterinary and microbiological sciences at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative council, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine.
3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.
4. As a condition of selection under this program, an eligible student shall agree to practice veterinary medicine in this state for a period of three years upon graduation. If a student fails to fulfill the commitment for practice in this state, the student shall repay to the state board of higher education all moneys forwarded to or for the student under this Act, on a proportionate basis.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the student loan trust fund, not otherwise appropriated, the sum of \$262,500, or so much of the sum as may be necessary, to the state board of higher education for the purpose of reducing the amount of tuition and other costs payable by or on behalf of eligible students enrolled in the veterinary medical education program at Kansas state university under this Act, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. STATE BOARD OF HIGHER EDUCATION PLAN FOR CONTINUATION OF PROGRAM. The state board of higher education shall develop a plan for the continuation of funding for the program established by this Act to be included in its 2007-09 biennium budget request from a funding source other than the student loan trust fund.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 146

SENATE BILL NO. 2120

(Education Committee)

(At the request of the State Board for Career and Technical Education)

PRIVATE POSTSECONDARY INSTITUTIONS

AN ACT to create and enact section 15-20.4-03.1 of the North Dakota Century Code, relating to fees provided to the state board for career and technical education for authorizations to operate private postsecondary institutions; and to amend and reenact sections 15-20.4-04 and 15-20.4-06 and subsection 2 of section 15-20.4-15 of the North Dakota Century Code, relating to authorizations to operate private postsecondary institutions and use of false academic degrees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-20.4-03.1 of the North Dakota Century Code is created and enacted as follows:

15-20.4-03.1. Authorization fee fund. There is created an authorization fee fund into which fees provided to the board upon application for authorization to operate a postsecondary educational institution under section 15-20.4-03 must be deposited. The fund and interest earned on the fund may be spent by the board pursuant to legislative appropriation exclusively to carry out the intent and purpose of this chapter. This fund is not subject to section 54-44.1-11.

SECTION 2. AMENDMENT. Section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-04. Minimum standards - Exceptions.

1. All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution operating in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or a substantial good-faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate.
2. This section does not apply to postsecondary educational institutions operating in this state and enrolling ten or fewer students that do not grant degrees and that offer mainly hands-on training in low census occupations, as determined by the board. "Degree" as used in this subsection means a document that provides evidence or demonstrates

completion of a course of instruction that results in the attainment of a rank or level of associate or higher.

SECTION 3. AMENDMENT. Section 15-20.4-06 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-06. Refund of tuition fees. Postsecondary educational institutions shall refund tuition and other charges, other than a reasonable application fee, when written notice of cancellation is given by the student in accordance with the following schedule:

1. When notice is received prior to, or within seven days after completion of the first day of instruction, or after receipt of the first correspondence lesson by the institution, all tuition and other charges ~~except twenty-five dollars thereof~~ must be refunded to the student.
2. When notice is received prior to, or within thirty days after completion of the first day of instruction, or prior to the completion of one-fourth of the educational services, all tuition and other charges except twenty-five percent thereof must be refunded to the student.
3. When notice is received upon or after completion of one-fourth of the educational services, but prior to the completion of one-half of the educational services, all tuition and other charges except fifty percent thereof must be refunded to the student.
4. When notice is received upon or after the completion of fifty percent of the educational services, no tuition or other charges may be refunded to the student.

The provisions of this section do not prejudice the right of any student to recovery in an action against any postsecondary educational institution for breach of contract or fraud.

SECTION 4. AMENDMENT. Subsection 2 of section 15-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

2. a. It is unlawful for an individual to knowingly use or claim to have a false academic degree:
 - (1) To obtain employment;
 - (2) To obtain a promotion ~~of~~ or higher compensation in employment;
 - (3) To obtain admission to an institution of higher learning; or
 - (4) In connection with any business, trade, profession, or occupation.
- b. An individual who violates this subsection is guilty of a class A misdemeanor.

CHAPTER 147

HOUSE BILL NO. 1068

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADMINISTRATION

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to teachers' fund for retirement compliance with the Internal Revenue Code; and to amend and reenact subsection 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-19.2, and 15-39.1-20 of the North Dakota Century Code, relating to incorporation of Internal Revenue Code changes since the last enactment of those provisions into state law, retired teachers returning to work, and teachers' fund for retirement compliance with the Internal Revenue Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2005. "Salary" includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
 - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.
 - b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.
 - c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
 - d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.

- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. Recruitment bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

SECTION 2. AMENDMENT. Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code in effect on August 1, 2005, and the regulations issued under that section, as applicable to governmental plans.

SECTION 3. AMENDMENT. Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.6. Benefit limitations. Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2003~~ 2005, 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)] in effect on August 1, ~~2003~~ 2005.

SECTION 4. AMENDMENT. Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.2. (Effective through July 31, 2005) Retired teachers return to active service - Critical shortage areas and disciplines - Rules.

- 1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
 - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
 - b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in

full-time or part-time teaching duties during the one-year separation from service.

2. A retired teacher who returns to teaching under this section is not required to pay the employee assessment required by section 15-39.1-09. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

SECTION 5. AMENDMENT. Section 15-39.1-20 of 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 becoming vested must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned 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. A member may elect, at the time and under rules adopted 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 as allowed under section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2003~~ 2005.

SECTION 6. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code and regulations adopted pursuant to those provisions as they apply to governmental plans.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 148

HOUSE BILL NO. 1360

(Representatives Haas, Herbel, Horter)
(Senators Hacker, Wardner)

PART-TIME STUDENT LOANS

AN ACT to amend and reenact sections 15-62.1-02 and 15-62.1-05 of the North Dakota Century Code, relating to loans for part-time students and loan guarantee funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-62.1-02. Powers and duties of the agency. The agency has the following powers and duties under this chapter:

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; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, 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; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, 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. 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~~ outside 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.
2. To take, hold, expend, and administer, on behalf of the state from any source any real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the agency may be a general obligation of the state of

North Dakota, nor may be payable out of any moneys except those made available to the agency under this chapter. Nothing in this chapter may be construed to authorize the agency to borrow funds for any use relating to the administration of the state guarantee loan programs.

SECTION 2. AMENDMENT. Section 15-62.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-62.1-05. Establishment and maintenance of adequate guarantee funds - Appropriation. The agency may enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The agency shall establish and at all times maintain from funds appropriated under this chapter adequate guarantee reserve funds in special accounts in the Bank of North Dakota unless required by 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; Pub. L. 105-244; 112 Stat. 1581; 20 U.S.C. 1001 et seq.], as amended through December 31, 1998, to be invested elsewhere. The fund for loans ~~which that~~ are coinsured by the federal government must be maintained at a minimum amount equal to the requirements set forth in 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; Pub. L. 105-244; 112 Stat. 1581; 20 U.S.C. 1001 et seq.], as amended through December 31, 1998. The fund for loans ~~which that~~ are not coinsured by the federal government ~~may not be less than one-tenth of the dollar value of the unpaid principal balance of the loans will be determined by the agency but may be no less than the Bank of North Dakota historical default rate.~~ Funds appropriated under this chapter and designated as guarantee agency reserve funds for loans that are not coinsured by the federal government must be administered separately and segregated from reserve funds for loans that are coinsured by the federal government. The securities in which the moneys in the reserve funds may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the respective guarantee loan programs and income in excess of that required to pay the cost of administering the programs must be deposited in the respective reserve fund that corresponds to the source of the initial invested funds. The proceeds of reserve funds received from federal, state, or private sources, for the purpose of guaranteeing loans made to students as provided in this chapter, are ~~heroby~~ appropriated as a continuing appropriation for the payment of defaulted loans guaranteed by each respective fund.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 149

SENATE BILL NO. 2064

(Senators Lyson, Holmberg)

STATE SCHOLARSHIP APPLICANTS

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 applicants for state scholarships.

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 Applicant" means a graduate of an individual who has graduated from a high school in this state or who is a resident of this state for tuition purposes, and whose assessment composite scores on the test of academic achievement administered by the American college testing program ACT, Inc., place the student individual in at least the ninety-fifth percentile of all students taking the test by July first of the year preceding 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 individual is enrolled as a full-time resident student in an eligible institution.
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 an individual who has graduated from 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 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. 5. "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.

1. All ~~eligible candidates~~ applicants must be ranked by their composite scores on the test of academic achievement administered by ~~the American college testing program~~ ACT, Inc.
2. If two or more ~~eligible students~~ applicants have the same composite scores, they must be ranked by the numeric sum of the four scale scores on the test of academic achievement administered by ~~the American college testing program~~ ACT, Inc.
3. If two or more ~~eligible students~~ applicants have the same composite scores and the same numeric sum of the four scale scores, they must be ranked by ~~their high school class rank calculated on a percentile basis~~ the numeric sum of their English and mathematics scores.
4. The state board of higher education may establish additional criteria to rank applicants who have the same numeric sum of their English and mathematics scores.
5. Scholarships must be offered to ~~students~~ applicants in descending order according to this ranking until available funds have been expended or until the pool of ~~eligible~~ applicants has been exhausted.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 150**SENATE BILL NO. 2077**

(Education Committee)

(At the request of the State Board of Higher Education)

**STUDENT FINANCIAL ASSISTANCE PROGRAM
GRANTS**

AN ACT to amend and reenact subsection 2 of section 15-62.2-02 of the North Dakota Century Code, relating to the maximum amount for student financial assistance program grants; and to provide for a study of state education grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-62.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Determine the amount of individual grants, but not to exceed ~~six hundred~~ one thousand dollars per recipient per academic year under the North Dakota student financial assistance program.

SECTION 2. STUDY OF EDUCATION GRANTS. The state grant advisory board and state board of higher education are urged to study and consider the feasibility of providing an increasing, incremental, dollar amount of state grant awards to students who demonstrate the most significant financial need, without negatively impacting student eligibility of funding from other financial aid sources.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 151

SENATE BILL NO. 2032

(Legislative Council)
(Economic Development Committee)

BUSINESS INITIATIVES AND ECONOMIC DEVELOPMENT

AN ACT to create and enact a new chapter to title 15, a new section to chapter 54-44.4, and a new section to chapter 57-38.5 of the North Dakota Century Code, relating to a centers of excellence program, an office of management and budget procurement information program, and seed capital investment tax credit treatment of investments in excess of caps on credits; to amend and reenact sections 6-09-15, 10-04-05, 10-30.5-04, and 54-16-01, subsection 1 of section 57-38-01.2, subsection 1 of section 57-38-71, and sections 57-38.5-01, 57-38.5-02, 57-38.5-03, 57-38.5-04, and 57-38.5-05 of the North Dakota Century Code, relating to the authority of the Bank of North Dakota to invest funds, cross-references affected by the repeal of the venture capital corporation law, the authority of the North Dakota development fund to invest and manage funds, emergency commission membership, and the seed capital investment tax credit; to repeal chapters 10-30.1 and 10-30.2 and section 15-10-41 of the North Dakota Century Code, relating to venture capital corporations, the Myron G. Nelson Fund, Incorporated, and the centers of excellence program; to provide for state agency studies, reports to the legislative council, and legislative council studies; 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 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

6-09-15. (Effective through July 31, ~~2007~~ 2009) Powers. The Bank of North Dakota may:

1. Make, purchase, guarantee, or hold loans:
 - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
 - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
 - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
 - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.

- 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.
 - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
 - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
 - h. Under Public Law No. 99-198 [99 Stat. 1534; 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.
 - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
 - k. To instrumentalities of this state.
 - l. As otherwise provided by this chapter or other statutes.
 - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.
 - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
- 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. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
 - 3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.
 - 4. Invest its funds:

- a. In conformity with policies of the industrial commission.
 - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
 - c. In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, not to exceed ~~five~~ ten million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.
5. Buy and sell federal funds.
 6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
 7. Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
 8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
 9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
 10. Purchase mortgage loans on residential real property originated by financial institutions.

(Effective after July 31, ~~2007~~ 2009) Powers. The Bank of North Dakota may:

1. Make, purchase, or hold loans:
 - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
 - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
 - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.

- d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
 - 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.
 - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
 - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
 - h. Under Public Law No. 99-198 [99 Stat. 1534; 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.
 - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
 - k. To instrumentalities of this state.
 - l. As otherwise provided by this chapter or other statutes.
 - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.
 - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
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. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that

provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

4. Invest its funds:
 - a. In conformity with policies of the industrial commission.
 - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
5. Buy and sell federal funds.
6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
7. Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
10. Purchase mortgage loans on residential real property originated by financial institutions.

⁹⁷ **SECTION 2. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

10-04-05. Exempt securities. Sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

⁹⁷ Section 10-04-05 was also amended by section 3 of House Bill No. 1176, chapter 97.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an Act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of financial institutions of North Dakota.
3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof.
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
 - a. Apply for and obtain the written approval of the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
 - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
 - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is

prime quality negotiable commercial paper which has at the time of issuance a definite maturity of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale.
8. Securities, including patronage dividends or refunds, issued by any cooperative organized under the statutes of this state.
9. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security when the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 9, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby.
11. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.
12. Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 40-30.1; provided that prior to any offer of such security, the issuer must meet the following conditions:
 - a. Apply for and obtain written approval by the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.
 - c. File such additional information as the commissioner requires by rule or order or may subsequently request.

- d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
- e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
- f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

- ~~13.~~ Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.

44. 13. a. Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, listed or designated, or approved for listing or designation upon notice of issuance on:
- (1) The New York stock exchange;
 - (2) The American stock exchange;
 - (3) The national association of securities dealers automated quotation national market system;
 - (4) Tier I of the Philadelphia stock exchange;
 - (5) Tier I of the Pacific stock exchange;
 - (6) Chicago board options exchange; or
 - (7) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that it would be in the public interest.

- 45- 14. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

SECTION 3. AMENDMENT. Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-04. (Effective through July 31, 2007 2009) Powers. The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.
3. Borrow funds not to exceed ~~five~~ ten million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds. The corporation may provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

(Effective after July 31, 2007 2009) Powers. The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.

SECTION 4. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of higher education.
2. "Center" means a center of excellence relating to economic development which has been designated or named under this chapter.
3. "Commission" means the centers of excellence commission.
4. "Foundation" means the North Dakota economic development foundation.
5. "Industry cluster" means one of the following industries:
 - a. Advanced manufacturing;

- b. Energy;
- c. Information and technology;
- d. Tourism;
- e. Value-added agriculture; or
- f. An industry, including the aerospace industry, specifically identified by the department of commerce as an industry that will contribute to the gross state product.

Centers of excellence.

1. The board shall establish a centers of excellence program relating to economic development. Through the program the commission shall make funding award recommendations for commission-approved applications to the board, the foundation, and the budget section of the legislative council. A center must be an institution of higher education under the control of the board or a nonprofit university-related or college-related foundation of an institution of higher education under the control of the board. In order to be considered for center designation, the institution of higher education or nonprofit foundation must be working in partnership with the private sector. In addition to any center designated under this chapter, the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation are centers.
2. A commission funding award recommendation must be for a specified amount. Designation of a center occurs upon board, foundation, and budget section approval of a commission funding award recommendation. In considering whether to designate a center, the board, foundation, and budget section may not modify the commission recommendation. The budget section may not make a determination of whether to approve or reject a commission funding award recommendation until the emergency commission reviews the commission recommendation and makes a recommendation to the budget section.
3. A center that receives funds distributed under this chapter is not qualified to receive subsequent designations as a center until the biennium following the center's most recent designation.
4. The board rules adopted under subsection 9 of section 15-10-17, relating to ownership of intellectual property, inventions, and discoveries, must address activities and issues unique to centers.

Centers of excellence commission. The centers of excellence commission consists of six members. The foundation shall appoint three of the foundation's members to serve on the commission and the board shall appoint three of the board's members to serve on the commission. The commission members shall designate a chairman and a vice chairman of the commission. Each member of the commission shall serve for a term of three years, beginning July first; may be reappointed for additional terms; and serves at the pleasure of the appointing entity. If a commission member ceases to serve as a member of the appointing entity, that member's membership on the commission ceases immediately and the appointing

entity shall appoint a new member for the remainder of the term. Terms of initial commission members begin on the effective date of this Act and must be staggered. On a meeting-by-meeting basis, an appointing entity may substitute a member of that appointing entity to serve in place of one of the regular members appointed by that entity. If the commission chairman and vice chairman are not present at a meeting, the commission members present at that meeting shall select a commission member to serve as chairman for that meeting. A commission member may receive compensation and travel and expense reimbursement from the appointing entity. The board shall provide the commission with appropriate staff services as may be requested by the commission.

Application - Eligibility requirements.

1. The board shall provide center application forms, accept applications, review applications for completeness and compliance with board policy, and forward complete applications to the commission in accordance with guidelines established by the commission.
2. The commission shall meet as necessary to review all complete applications; approve or disapprove complete applications; make funding award recommendations for commission-approved proposed centers; direct the office of management and budget to distribute funds to the centers; monitor centers for compliance with award requirements; and review changes in assertions made in center applications.
3. In considering whether to approve or disapprove an application, the commission shall consider whether the center will:
 - a. Use university or college research to promote private sector job growth and expansion of knowledge-based industries or use university or college research to promote the development of new products, high-tech companies, or skilled jobs in this state;
 - b. Create high-value private sector employment opportunities in this state;
 - c. Provide for public-private sector involvement and partnerships;
 - d. Leverage other funding;
 - e. Increase research and development activities that may involve federal funding from the national science foundation experimental program to stimulate competitive research;
 - f. Foster and practice entrepreneurship;
 - g. Promote the commercialization of new products and services in industry clusters;
 - h. Become financially self-sustaining; and
 - i. Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.

Use of funds - Terms of funds - Distribution of funds.

1. A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs.
2. As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter. The annual audits must be provided until the completion of four years following the final distribution of funds under this chapter.
3. Before the commission directs the office of management and budget to distribute funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed under this chapter. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The matching funds may include a combination of cash and in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. In making funding recommendations and designation determinations, the commission, board, foundation, and budget section shall give major consideration to the portion of the matching funds provided in cash by the private sector.
4. If, before funds are distributed by the office of management and budget, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the office of management and budget withhold all or a portion of any undistributed funds pending commission review of the changes.

SECTION 5. AMENDMENT. Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

54-16-01. Emergency commission - Members - Organization - Quorum - Meetings. The emergency commission consists of the governor, the chairman majority leaders of the senate and house of representatives of the legislative council assembly, the secretary of state, and the chairmen of the senate and house of representatives appropriations committees. If the chairman of an appropriations committee ceases to be a member of the legislative assembly, the vice chairman of that committee succeeds to that position on the commission. An appropriations committee vice chairman may serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a commission meeting. The vice chairman of the legislative council If a majority leader ceases to be a member of the legislative assembly, the respective house's assistant majority leader succeeds to that position on the commission. A majority leader's assistant majority leader may serve as a member of the commission in the place of the chairman of the legislative council majority leader at the request of the chairman of the legislative council majority leader if that individual majority leader is serving on the commission in another capacity or is unable to attend a commission meeting. Four members of the commission constitute a quorum. The

governor is the chairman and the secretary of state is the secretary of the commission. The commission shall meet at the call of the chairman.

SECTION 6. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Procurement information - Web site.

1. The office of management and budget shall establish and maintain a procurement information web site on the internet. This procurement information web site must provide current information regarding North Dakota government procurement opportunities in order to inform potential vendors of the commodities and services sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for each purchase of services or commodities over the amount established for small purchases, the office of management and budget and every purchasing agency shall provide procurement information on the web site. The time period and manner of providing procurement information on the web site must be in accordance with rules adopted by the office of management and budget. The office of management and budget may contract with a third party to assist in providing or maintaining the procurement information web site.
2. A state agency or institution may elect to use the procurement information web site for the purchase of services and commodities that are not subject to the procurement requirements of this chapter, including:
 - a. Commodities and services exempted under section 54-44.4-02;
 - b. Public improvements under title 48;
 - c. Architect, engineer, construction management, and land surveying services under chapter 54-44.7; and
 - d. Concessions under chapter 48-09.

⁹⁸ **SECTION 7. AMENDMENT.** Subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The taxable income of an individual, estate, or trust as computed pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall be:
 - a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.

⁹⁸ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 1 of Senate Bill No. 2362, chapter 557, and section 2 of Senate Bill No. 2391, chapter 560.

- b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of North Dakota or the Constitution of the United States.
- c. Reduced by the amount of federal income tax liability, but not social security and self-employment taxes, as computed under chapter 1 of the Internal Revenue Code of 1954, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that such taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. However, such federal income tax liability must be reduced by all credits thereon except credits for federal income tax withholding payments, estimates of federal income tax, and income taxes of foreign countries. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.
- d.
 - (1) Reduced by three hundred dollars if the return filed is a joint return by husband and wife. If separate returns are filed by husband and wife, no deduction can be taken under this subdivision. This subdivision shall not be applicable to estates or trusts.
 - (2) Reduced by three hundred dollars if the return filed is the return of a "head of household" as defined by the United States Internal Revenue Code of 1954, as amended; provided, that the term "head of household" shall also include a "surviving spouse" as defined by said code.
 - (3) Reduced by seven hundred fifty dollars for each adopted child who is under the age of twenty-one years and who is either irreversibly mentally retarded or, on the basis of the annual findings of a licensed physician, is blind or disabled as determined pursuant to the provisions of title XVI of the United States Social Security Act, provided the return filed is the return of the parent of an adopted child and such child qualifies as a dependent of such parent for federal income tax purposes.
 - (4) Reduced, up to a maximum of one thousand dollars, by the amount of filing fees, attorney's fees, and travel costs incurred in connection with an adoption and by the actual costs paid to a licensed child-placing agency in making the adoptive study and in supervising and evaluating the adoptive placement. Provided, however, that the reduction

allowed under this paragraph shall apply only to such adoption expenses of a child who qualifies under the provisions of paragraph 3.

- (5) Reduced by one thousand seven hundred fifty dollars for each child under the age of twenty-one years adopted by the taxpayer. The reduction under this paragraph may be claimed only by an adoptive parent of an adopted child and the child must qualify as a dependent of the adoptive parent for federal income tax purposes. The reduction may be claimed by only one spouse, for spouses filing separately under this chapter. The reduction provided by this paragraph may be claimed for the taxable year in which the adoption becomes final and any unused portion of the reduction may be carried forward by the taxpayer for up to five taxable years. The reduction does not apply to the adoption of children of the taxpayer's spouse.
- e. Reduced by the actual amount of the medical expenses that were incurred but not allowed on the federal return by reason of the federal medical deduction limitation.
- f. Increased by the amount of any income taxes, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- g. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax; provided, that interest upon obligations of the state of North Dakota or any of its political subdivisions shall not be included.
- h. 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.
- i. ~~Repealed by S.L. 2003, ch. 529, § 3.~~
- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the firefighters relief associations authorized by chapters 18-05 and 18-11, policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.
- ~~k.~~ i. Reduced by any amount, up to a maximum of one thousand dollars, received by any person as payment for services performed while on active duty in the armed forces of the United States or as payment for attending periodic training meetings for drill and instruction as a member of the national guard or of a reserve unit of the armed forces of the United States. However, persons serving

in the armed forces of the United States, except field grade and general officers, who are stationed outside of any state of the United States or the District of Columbia for not less than thirty days during the tax year shall be allowed an additional reduction of up to three hundred dollars per month for each month or portion of a month received as payment for services performed while on active duty at such location.

† k. Reduced by any amount, up to a maximum of five thousand dollars, received by any person fifty years of age or older as retired military personnel pay for service in the United States army, navy, air force, coast guard, or marine corps or reserve components thereof; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

† l. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) A resident of this state.
- (2) Receiving more than one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intending to use any farmland to be purchased or rented for agricultural purposes.
- (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board for career and

technical education or an equivalent program approved by the agriculture commissioner.

- (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.

~~¶~~ m. Reduced by the amount of interest received during that taxable year on a contract on the sale of any land, buildings, improvements, and equipment associated with the land, buildings, or improvements, used or useful in connection with a revenue-producing enterprise to a beginning businessman, excluding beginning farmers as defined in subdivision ~~¶~~ l. The contract must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer containing a list of the buyer's assets and debts and giving the buyer's net worth, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including that person's dependents and spouse, if any, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings is not to be included. This statement is to be filed along with the income tax return. For the purposes of this subdivision, "beginning businessman", excluding beginning farmers as defined in subdivision ~~¶~~ l, means any person who is:

- (1) A resident of this state.
- (2) Receiving more than one-half of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intending to use any revenue-producing enterprise purchased or rented for business purposes.
- (4) Adequately trained, by experience or education, in the type of revenue-producing enterprise which that person wishes to begin.
- (5) The owner of property with a net worth, including the net worth of property of that person's dependents and spouse, if any, of less than one hundred thousand dollars.

~~¶~~ n. Reduced by any amount, up to a maximum of three hundred dollars received by any person or six hundred dollars if a joint return is filed, as interest earned from a financial institution located in this state. For purposes of this subdivision, "financial institution"

means any organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

- ~~p.~~ **Repealed by S.L. 1999, ch. 487, § 3.**
- ~~q.~~ **Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in a venture capital corporation organized pursuant to chapter 10-30.1. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.**
- ~~r.~~ o. Reduced by any amount, up to a maximum of five thousand dollars, received as retirement benefits paid by the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, other than retired military personnel pay, as exempted in subdivision ~~l~~ k; provided, however, that the adjustment provided in this subdivision must be reduced by any amount received pursuant to the federal Social Security Act.
- ~~s.~~ p. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions; provided the amount of the distribution excluded under this subdivision is included in federal taxable income.
- ~~t.~~ q. 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.
- ~~u.~~ r. Reduced by the amount received by the taxpayer as payment for services performed when called or ordered to title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. An individual claiming the reduction under this subdivision may not also claim the reduction under subdivision ~~k~~ j for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

SECTION 8. AMENDMENT. Subsection 1 of section 57-38-71 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning entrepreneur", excluding beginning farmers as defined in subdivision ~~m~~ l of subsection 1 of section 57-38-01.2, means any person who:
 - a. Is a resident of this state.
 - b. Receives more than one-half of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which a deduction will be claimed under sections 57-38-71 through 57-38-74.
 - c. Intends to use any revenue-producing enterprise purchased or rented for business purposes.
 - d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which that person wishes to begin.
 - e. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

SECTION 9. AMENDMENT. Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.
2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. "Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable tax year is not taxed as a corporation under chapter 57-38.
4. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth but does not

include an agricultural commodity processing facility as defined under section 57-38.6-01.

4- 5. "Qualified business" means:

a- A a business other than a real estate investment trust which is a primary sector business that:

(1) a. Is incorporated 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;

(2) b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

(3) c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; ~~and~~

(4) 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 ten employees or one hundred fifty thousand dollars of sales annually; ~~or~~

b- An organization that:

(1) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state; and

(2) Attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business that qualifies under subdivision a and

e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.

5- 6. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough entity. The term does not include a real estate investment trust.

SECTION 10. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum investments in qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses. For investments made after December 31, 2004, the maximum aggregate amount of qualified investments a qualified business may receive is limited to five hundred thousand dollars under this chapter. The limitation on investments under this section may not be interpreted to

limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

SECTION 11. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not ~~less than five thousand dollars and not more than two hundred fifty thousand dollars~~. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A partnership passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's passthrough entity's investment in a qualified business must be determined at the partnership passthrough entity level. The amount of the total credit determined at the partnership passthrough entity level must be allowed to the partners, limited to individuals, estates, and trusts, members in proportion to their respective interests in the partnership passthrough entity.
5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

8. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 12. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-04. Taxable year for seed capital investment tax credit. The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business.

SECTION 13. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter ~~through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred thousand dollars for each calendar year.~~ If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

SECTION 14. A new section to chapter 57-38.5 of the North Dakota Century Code is created and enacted as follows:

Credit for investments made before 2005. An investment made before January 1, 2005, which did not qualify for the tax credit under this chapter because of the two million five hundred thousand dollar credit limitation in effect before the effective date of this Act is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of forty-five percent of the amount invested by the taxpayer in a qualified business subject to the following:

1. The aggregate investment for which a taxpayer may obtain a credit under this section is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
2. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this section which is attributable to investments made before January 1, 2005.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to five taxable years after the taxable year in which the investment was made.
4. This section does not apply to investments made in an agricultural processing facility as defined under section 57-38.6-01.

SECTION 15. REPEAL. Chapters 10-30.1 and 10-30.2 of the North Dakota Century Code are repealed.

SECTION 16. REPEAL. Section 15-10-41 of the North Dakota Century Code is repealed.

SECTION 17. NORTH DAKOTA BUSINESS CLIMATE INITIATIVE - LEGISLATIVE COUNCIL STUDY. During the 2005-06 and 2007-08 interims, the legislative council shall study the state's business climate through a business climate initiative. The business climate initiative must include receipt of agency reports regarding economic development legislation introduced by the legislative council during previous legislative sessions, active participation in business climate focus groups across the state, and active participation in biennial business congresses. The focus groups shall discuss ways to enhance the state's business climate to stimulate job growth and enhance economic prosperity for employers and employees by encouraging the growth of existing businesses in the state, creating new businesses in the state, and encouraging expansion or relocation of businesses to this state. Each business congress must receive a report on the activities of the focus group discussions, shall identify methods to enhance the state's business climate to stimulate job growth and enhance economic prosperity, shall identify methods to prepare the state for the high-growth and high-demand jobs of the future, and shall evaluate the impact of existing state economic development programs. The department of commerce shall organize the business climate focus groups and the business congresses. Before each business congress, which must be held before June 1, 2006, and before June 1, 2008, the department shall hold a minimum of six focus group discussions, two of which specifically focus on local economic developers and four of which specifically focus on private business needs. The department shall consult with the legislative council in compiling focus group and business congress participant invitation lists and drafting and distributing invitations, establishing focus group and business congress dates and locations, and preparing agendas for focus groups and business congresses. The legislative council shall contract with a third party to provide professional services to plan, facilitate, report on, and coordinate followup for the focus groups and business congresses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth and sixty-first legislative assemblies.

SECTION 18. VENTURE AND RISK CAPITAL - LEGISLATIVE COUNCIL STUDY. During the 2005-06 interim, the legislative council shall study issues relating to venture and risk capital and whether and how some of these issues may be negatively impacting business development in the state. The study must address how to define venture and risk capital for purposes of the study; real and perceived issues regarding gaps in the availability of venture and risk capital in the state; whether state programs adequately address the venture and risk capital needs of businesses in the state and whether these programs should be changed to increase availability to venture and risk capital, including whether the partnership in assisting community expansion program might be used as a model to address possible venture and risk capital availability issues and whether the state could effectively play a role as facilitator in improving access to venture and risk capital; how the state could assist in creating an environment more conducive to attracting private venture and risk capital in the state; and how other states have attempted to address venture and risk capital concerns of businesses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 19. ALTERNATIVE AND VENTURE CAPITAL INVESTMENTS - EARLY-STAGE CAPITAL FUNDS - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the president of the Bank of North Dakota shall report to the legislative council on the status of the Bank's investments in alternative and venture capital investments and early-stage capital funds under subdivision c of subsection 4 of section 6-09-15. The president shall inform the legislative council whether this investment program should continue and whether there are potential changes that could be made to improve the state's venture capital and early-stage capital investment structure.

SECTION 20. CENTERS OF EXCELLENCE - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the state board of higher education and the centers of excellence commission shall report to the legislative council on the status of the centers of excellence program under section 4 of this Act. The report must include information regarding approved and rejected applications; funding; private sector participation; accomplishments of each center of excellence, including information regarding how each center of excellence is meeting, or will meet, the criteria under section 4 of this Act; and whether there are potential changes that could be made to improve the centers of excellence program.

SECTION 21. INSURANCE AND LIABILITY DATA - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the insurance commissioner shall compile existing data regarding the state's liability insurance marketplace. The data must include information regarding issues that may result in barriers for businesses seeking to obtain affordable liability insurance coverage, with specific focus on the travel and tourism industry, and must include information regarding successful actions taken by other states to improve the availability and affordability of liability insurance. Before July 1, 2006, the insurance commissioner shall report to the legislative council the data compiled and identify proposed legislative changes necessary to implement any recommendations to make the state's laws and availability of liability insurance more attractive to businesses in this state.

SECTION 22. TECHNOLOGY COMMERCIALIZATION STUDY - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the state board of higher education shall conduct a study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies. The study must include roundtable discussions; include consideration of leveraging research, capital, and entrepreneurs; include consideration of successful actions taken by other states to increase technology commercialization; and focus on approaches that are specifically tailored to the state's unique circumstances. The board may contract with a third party to conduct the study. Before July 1, 2006, the chancellor of the North Dakota university system shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommendations to stimulate technology commercialization in this state.

SECTION 23. TRANSPORTATION STUDY - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the upper great plains transportation institute shall conduct a study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development, with a focus on the potential to expand the sale of goods to markets outside the state by strengthening the state's transportation infrastructure. In conducting this study, the upper great plains transportation institute shall consult with the department of transportation and the department shall cooperate in the study. The study must include consideration of how to improve the load-carrying limits of the state's highways and associated costs and benefits; consideration of

what enhancements must be made to the state's highways to allow load limits to be raised to more efficiently move goods to market and associated costs and benefits; exploration of the phenomenon of the decline of freight service by rail, including the prospects for offering incentives to rail providers to expand the availability of rail for transportation of goods to market and the associated costs and benefits; recommendations on how to enhance the state's transportation infrastructure; whether it is feasible to identify and assist airports that are specially situated in order to assist in economic development; and an analysis of the projected economic development impacts associated with the recommended infrastructure improvements. Before July 1, 2006, the upper great plains transportation institute shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommended changes to the state's transportation infrastructure.

SECTION 24. PROCUREMENT ASSISTANCE STUDY - REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the director of the office of management and budget shall report to the legislative council on the status of providing procurement information through the internet under section 6 of this Act; perform a study on the most effective manner in which to provide for a procurement assistance center; and report to the legislative council on the outcome of the procurement assistance center study, including what services might be provided by such a center, how services might be provided by such a center, and what legislative changes would be required to implement such a center.

SECTION 25. EFFECTIVE DATE - EXPIRATION DATE. Sections 9 through 13 of this Act are effective for taxable years beginning after December 31, 2004. Section 15 of this Act becomes effective on August 1, 2007. Sections 2, 7, and 8 of this Act are effective for taxable years beginning after December 31, 2008. Section 10 of this Act is effective for a business certified as a qualified business after December 31, 2004. Section 14 of this Act is effective for taxable year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 13 of this Act. Section 4 of this Act is effective through July 31, 2011, and after that date is ineffective.

Approved April 27, 2005

Filed April 27, 2005

ELEMENTARY AND SECONDARY EDUCATION

CHAPTER 152

SENATE BILL NO. 2083

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT FINANCE FACTS REPORT

AN ACT to amend and reenact sections 15.1-02-09 and 15.1-02-10 of the North Dakota Century Code, relating to the contents and distribution of the school district finance facts report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-09. Biennial School district finance facts report - Contents. The superintendent of public instruction shall submit ~~a biennial~~ an annual report on the financial condition of school districts to the governor, legislative council, and the secretary of state ~~in accordance with section 54-06-04~~ by the end of February. The secretary of state shall transmit the report to state archivist for official and public use. ~~The superintendent shall report must include in the report:~~

1. The number of school districts in the state.
2. The financial condition of each school district, including its receipts and expenditures.
3. The value of all property owned or controlled by each school district.
4. The cost of education in each school district.
5. The number of teachers employed by each school district and their salaries.
6. The number of students in average daily membership and average daily attendance in each school district, the grades in which they are enrolled, and, when applicable, the courses in which they are enrolled.
7. Information regarding the state's approved nonpublic schools.
8. Other statistical data on public education in the state.

SECTION 2. AMENDMENT. Section 15.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-10. Biennial School district finance facts report - Distribution.

The superintendent of public instruction shall make the biennial annual school district finance facts report available to each member of the legislative assembly upon request. ~~The superintendent shall provide a copy of the report to each state officer and to the legislative council.~~ The superintendent shall provide eight copies of the report to the state library. The superintendent shall make the report available to the public on the superintendent of public instruction's web site.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 153

SENATE BILL NO. 2066

(Senators Flakoll, Freborg, Brown)

(Representatives Hawken, N. Johnson, L. Meier)

SCHOOL DISTRICT INSTRUCTIONAL DAYS

AN ACT to amend and reenact section 15.1-06-05 of the North Dakota Century Code, relating to reconfiguration of instructional days by school districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-05. Instructional days - Reconfiguration - Application.

1. A school district may apply to the superintendent of public instruction for permission to reconfigure the number of instructional days required by section 15.1-06-04.
2. The superintendent of public instruction may approve an application under subsection 1 only if the reconfiguration of the required number of instructional days:
 - a. ~~(4)~~ Makes available to each of the school district's elementary students at least nine hundred fifty-one and one-half hours of instructional time and makes available to each of the district's high school students at least one thousand thirty-eight hours of instructional time; and
 - ~~(2)~~ ~~Does not reduce the hours of instructional time below the level made available to elementary students and high school students, respectively, by the school district during the last school year completed prior to the date of the application; and~~
 - b.
 - (1) Encourages innovation;
 - (2) Provides improved educational opportunities or enhanced academic opportunities for the students;
 - (3) Provides for greater flexibility in the use of a school by current students;
 - (4) Provides for greater flexibility in the use of a school by individuals or groups other than current students; or
 - (5) Results in significant cost-savings to the district.
3. A reconfiguration of instructional days approved by the superintendent of public instruction under this section is valid for one school year. A

school district may apply to the superintendent for permission to extend the reconfiguration ~~of instructional days for one additional year. If granted, the first extension after the initial year is valid for one school year. All extensions thereafter are valid for five school years.~~

4. If the superintendent of public instruction approves a district's application for reconfiguration of instructional time under this section, the district is eligible to receive the per student payments provided under chapter 15.1-27.
5. The superintendent of public instruction shall adopt rules governing the submission and evaluation of applications and the monitoring of any school or school district that receives a waiver under this section.
6. A reconfiguration of instructional days approved by the superintendent of public instruction under this section satisfies the requirements for school operation and instructional time required by law.
7. A reconfiguration of instructional days approved by the superintendent of public instruction under this section does not affect the accrual of teachers' benefits provided by law.

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

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 154

HOUSE BILL NO. 1228

(Representatives Delmore, Hawken, Mueller)
(Senators Flakoll, G. Lee, Taylor)

SCHOOL MONEY DISBURSEMENT POLICIES

AN ACT to amend and reenact section 15.1-07-12 of the North Dakota Century Code, relating to the disbursement of moneys by a school district business manager.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

15.1-07-12. Negotiable instruments - ~~Payment~~ Disbursement of moneys by business manager. ~~The~~

1.
 - a. The board of a school district may adopt policies governing the disbursement of school district moneys by the business manager.
 - b. The policies adopted under subdivision a may include:
 - (1) The authorization, creation, and approval of negotiable instruments;
 - (2) The use of credit or debit cards;
 - (3) The payment of invoices;
 - (4) The use of petty cash;
 - (5) The use of electronic payments; and
 - (6) The use of facsimile signatures.
 - c. The policies adopted under subdivision a must include internal controls to safeguard school district moneys.
2. If the board of a school district has not adopted policies to govern the disbursement of school district moneys by the business manager, the business manager ~~shall pay out~~ may disburse moneys only ~~upon the presentation~~ by issuance of a negotiable instrument ~~upon presentation~~ of a bill or invoice, the payment of which has been authorized by the president of the school board, and only if there ~~is are~~ sufficient ~~money~~ moneys available for the ~~payment~~ disbursement. Upon issuing a negotiable instrument, the business manager shall make a record of the instrument.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 155

SENATE BILL NO. 2226

(Senators Espeland, Freborg)

(Representative Delmore)

SCHOOL BOARD LEASES AND PERSONNEL

AN ACT to amend and reenact section 15.1-09-33 of the North Dakota Century Code, relating to the power of school boards to lease property and dismiss certain personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁹ **SECTION 1. AMENDMENT.** Section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-33. School board - Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a career and technical education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.

⁹⁹ Section 15.1-09-33 was also amended by section 1 of House Bill No. 1233, chapter 157, and section 1 of Senate Bill No. 2062, chapter 156.

9. Purchase, sell, exchange, and if appropriate, improve school, and lease for up to one year, equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel ~~for cause~~.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.
28. Suspend or dismiss a school district business manager for cause without prior notice.

29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 156

SENATE BILL NO. 2062

(Senators J. Lee, Brown, G. Lee)
(Representatives Belter, Wieland, Koppelman)

FARGO SCHOOL BOARD JURISDICTION

AN ACT to amend and reenact sections 15.1-09-33, 15.1-09-48, and 15.1-09-50 of the North Dakota Century Code, relating to powers of the board of education of the city of Fargo.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁰ **SECTION 1. AMENDMENT.** Section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-33. School board - Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, ~~to~~ have custody and control of all public school property in the city within the boundaries of the Fargo public school district and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a career and technical education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.

¹⁰⁰ Section 15.1-09-33 was also amended by section 1 of House Bill No. 1233, chapter 157, and section 1 of Senate Bill No. 2226, chapter 155.

8. Exercise the power of eminent domain to acquire real property for school purposes.
9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.

28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

SECTION 2. AMENDMENT. Section 15.1-09-48 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-48. Board of education of city of Fargo - Tax collection. The board of education of the city of Fargo has the power to levy taxes within the boundaries of the Fargo public school district and to cause such taxes to be collected in the same manner as other city taxes. The board of education shall cause the rate for each purpose to be certified by the business manager to the city auditor in time to be added to the annual tax list of the city. It is the duty of the city auditor to calculate and extend upon the annual assessment roll and tax list any tax levied by the board of education. The tax must be collected as other city taxes are collected. If the city council fails to levy any tax for city purposes or fails to cause an assessment roll or tax list to be made, the board of education may cause an assessment roll and tax list to be made and submit the roll to the city auditor with a warrant for the collection of the tax. The board of education may cause the tax to be collected in the same manner as other city taxes are collected or as otherwise provided by resolution of the board.

SECTION 3. AMENDMENT. Section 15.1-09-50 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-50. Board of education of city of Fargo - Powers. In addition to the powers granted to all school boards by section 15.1-09-33, the board of education of the city of Fargo has the power and duty:

1. To organize, establish, and maintain schools in the city and within the boundaries of the Fargo public school district; to change and discontinue the schools; and to liquidate the assets of the discontinued schools outside the district boundaries, as authorized by the state board of public school education.
2. To lease houses or rooms for school purposes, lease lots or sites for schools, and fence real property.
3. To build, enlarge, alter, improve, and repair schools and appurtenances upon lots or sites now owned or leased for school purposes.
4. To provide, sell, exchange, improve, and repair school apparatus, books for indigent students, and appendages.

5. To provide fuel and other supplies for the schools.
6. To have the custody and safekeeping of the schools, books, furniture, and appurtenances and to see that local ordinances regarding schools are observed.
7. To compensate teachers out of the money appropriated and provided by law for the support of the public schools in the city within the boundaries of the district so far as the same is sufficient, and to pay any remainder due from the money raised as authorized by this chapter.
8. To have the control and management of the public schools ~~of the city~~ within the boundaries of the district and from time to time to adopt rules for their good order, prosperity, and utility.
9. To prepare and report to the mayor and the city council ordinances and regulations necessary for the protection, safekeeping, and care of the schools, lots, sites, and appurtenances and all the property belonging to the city, connected with and appertaining to the schools, and to suggest proper penalties for the violation of ordinances and regulations.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 157

HOUSE BILL NO. 1233

(Representatives N. Johnson, Delmore)
(Senators Brown, Flakoll, Wardner)

SCHOOL BOARD MEMBERSHIP DUES

AN ACT to amend and reenact section 15.1-09-33 of the North Dakota Century Code, relating to school board membership dues.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰¹ **SECTION 1. AMENDMENT.** Section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-33. School board - Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a career and technical education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.

¹⁰¹ Section 15.1-09-33 was also amended by section 1 of Senate Bill No. 2062, chapter 156, and section 1 of Senate Bill No. 2226, chapter 155.

9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.
28. Suspend or dismiss a school district business manager for cause without prior notice.

29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay dues allowing for the board to hold membership dues to in city, county and, state, and national organizations and associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 158

HOUSE BILL NO. 1232

(Representatives Froelich, D. Johnson, R. Kelsch)
(Senators Flakoll, Seymour)

STUDENT TEACHER STIPENDS

AN ACT to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to stipends for student teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

Student teachers - Provision of stipend. The board of a school district may provide a stipend to a student teacher assigned to a school in the district.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 159

HOUSE BILL NO. 1160

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT UNEMPLOYMENT BENEFITS

AN ACT to create and enact sections 15.1-12-18.1 and 15.1-12-26.1, a new subsection to section 15.1-12-27, and section 15.1-12-28.1 of the North Dakota Century Code, relating to the reimbursement by reorganized and dissolving school districts of unemployment compensation benefits paid by job service North Dakota; and to amend and reenact sections 15.1-12-11 and 15.1-12-28 and subsection 1 of section 15.1-12-29 of the North Dakota Century Code, relating to notification of job service North Dakota, the distribution of a fund of the dissolved school district, and the credit to taxpayers of the dissolved school district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-11. School district reorganization - Approved plan - Special election - Formation of new district.

1. If the state board approves a reorganization plan, the state board shall notify each county superintendent of schools having jurisdiction over real property in the proposed new district. A county superintendent receiving notice under this section shall call a special election in order that the electors residing within the boundaries of the proposed new district may approve or reject the reorganization plan. The election must be held between July first and December thirty-first of the year in which the plan is approved by the state board. If there are insufficient days left in the year to meet the notice requirements of this section, the election must be held the following year.
2. If the state board approves a reorganization plan, the state board shall notify job service North Dakota of the names of the school districts planning to reorganize, the election date proposed in the reorganization plan, the proposed effective date of the reorganization, and the proposed name of the new reorganized school district.
3. The county superintendent shall give notice of the election by publishing the time, date, and place of the election in the official newspaper of the county, at least fourteen days before the date of the election.
- ~~3.~~ 4. The election notice must:
 - a. State that the election has been called for the purpose of approving or rejecting a plan to form a new school district;
 - b. Describe the boundaries of the proposed new district; and

- c. Include a statement describing the adjustment of property, debts, and liabilities proposed in the plan, together with the proposed tax levy.
4. 5. The county superintendent shall appoint judges and clerks of the election. The election must be conducted in the same manner and the polls must open and close at the same time as specified for school district elections.
5. 6. The result of the elections must be certified by the participating school boards and delivered to the county superintendent within three days after the closing of the polls.
6. 7. If a majority of electors residing within each school district vote to approve the reorganization plan, the county superintendent shall make the necessary adjustments of property, debts, and liabilities and perform all duties required by law in order to establish and organize the new school district. The county superintendent shall also notify job service North Dakota regarding the results of the election and, if the reorganization is approved, shall indicate the effective date of the reorganization and the name of the new reorganized school district.

SECTION 2. Section 15.1-12-18.1 of the North Dakota Century Code is created and enacted as follows:

15.1-12-18.1. Reorganizing school districts to contact job service North Dakota - Liability of new reorganized school district for reimbursement of unemployment compensation benefits paid. The reorganizing school districts shall contact job service North Dakota for its estimation of the new reorganized school district's potential obligation to job service North Dakota for reimbursement of unemployment compensation benefits that could potentially be paid by job service North Dakota to employees of the reorganizing school districts. The new reorganized school district shall reimburse job service North Dakota for unemployment compensation benefits paid by job service North Dakota to former employees of the school districts which reorganized and for which the reorganizing school districts would have been liable, including any delinquent reimbursement payments.

SECTION 3. Section 15.1-12-26.1 of the North Dakota Century Code is created and enacted as follows:

15.1-12-26.1. Dissolving school district to contact job service North Dakota. Before the hearing before the county committee, the dissolving school district shall contact job service North Dakota for its estimation of the school district's potential obligation to job service North Dakota for reimbursement of unemployment compensation benefits that could potentially be paid by job service North Dakota to school district employees.

¹⁰² **SECTION 4.** A new subsection to section 15.1-12-27 of the North Dakota Century Code is created and enacted as follows:

¹⁰² Section 15.1-12-27 was also amended by section 7 of House Bill No. 1154, chapter 167.

The state board shall provide a copy of its final findings of fact, conclusions of law, and order regarding the dissolution to job service North Dakota. If not otherwise included in the findings of fact, the state board shall also provide job service North Dakota with information on the distribution and valuation of property from the dissolving district to the receiving districts.

SECTION 5. AMENDMENT. Section 15.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-28. Dissolution of school district - Unobligated cash balance - Distribution.

1. Any unobligated cash balance not exceeding ten thousand dollars must be held in a separate fund by the auditor of the county having the greatest share of the dissolved school district's land. The county auditor shall hold the fund for one year after the effective date of the dissolution. During that year, the county auditor shall accept assets and pay unresolved debts attributable to the dissolved school district.
2. After one year, the county auditor shall distribute the remaining cash balance as follows:
 - a. If the dissolving school district did not have sufficient funds for the reimbursement account set up under section 15.1-12-28.1, then as much of the remaining cash balance as would be necessary to pay the estimated obligation to job service North Dakota must be deposited in the reimbursement account. Unless otherwise directed by the order of dissolution, any remaining cash balance must be distributed to the receiving school districts in the same percentage as the taxable valuation received at the time of the attachment order.
 - b. If the reimbursement account in section 15.1-12-28.1 was fully funded by the dissolving school district, the county auditor shall distribute the remaining cash balance among the school districts to which the real property of the dissolved district was attached. Unless otherwise directed by the order of dissolution, the distribution to each shall be the same percentage as the taxable valuation at the time of the attachment order.

SECTION 6. Section 15.1-12-28.1 of the North Dakota Century Code is created and enacted as follows:

15.1-12-28.1. Dissolving school district to set up reimbursement account for benefit of job service North Dakota - Liability of receiving school districts if funds are insufficient.

1. After the dissolution is approved by the state board and after ten thousand dollars is set aside as provided for in section 15.1-12-28, the school district shall set aside in a reimbursement account the amount of money estimated by job service North Dakota to reimburse job service North Dakota for unemployment compensation benefits that could potentially be paid by job service North Dakota to school district employees, as indicated in section 15.1-12-26.1. The school district shall set aside that money in a reimbursement account with the North

Dakota school boards association or with the county auditor and shall notify job service North Dakota of the account's location.

2. The money must be held for two and one-half years from the effective date of the dissolution and must be used to reimburse job service North Dakota for unemployment compensation benefits paid by job service North Dakota to former employees of the dissolved school district for which the dissolved school district would have been liable, including any delinquent reimbursement payments.
3. After the two and one-half year period, moneys remaining in the account must be distributed to the school districts that received the dissolving school district's land, in the same proportion as taxable valuation received by the school districts.
4. If the money in the account is not sufficient to reimburse job service North Dakota for all unemployment compensation claims paid, then the school districts that received the dissolving school district's land must pay the balance to job service North Dakota in the same proportion as taxable valuation received by the school districts.

¹⁰³ **SECTION 7. AMENDMENT.** Subsection 1 of section 15.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

1. Any unobligated cash balance ~~in excess of~~ remaining after ten thousand dollars is set aside under section 15.1-12-28 and the required amount is deposited in the reimbursement account for job service North Dakota under section 15.1-12-28.1 is a credit for real property owners within the boundaries of the dissolved school district against taxes levied by the district in which their property is now situated. The county auditor shall base the credit on the five-year average of the total mills levied for education by the dissolved district. If property from the dissolved district is attached to more than one school district, the credit that eligible real property owners receive must be the same percentage of the unobligated cash balance as the taxable valuation of the individual's property bears to the total taxable valuation of the dissolved district's property at the time of the attachment order.

Approved March 4, 2005

Filed March 4, 2005

¹⁰³ Section 15.1-12-29 was also amended by section 8 of House Bill No. 1154, chapter 167.

CHAPTER 160**SENATE BILL NO. 2375**

(Senators Brown, Flakoll)
(Representatives Carlson, Grande)

UNIFIED CREDENTIAL SYSTEM

AN ACT relating to a unified system of licensure and credential qualifications or reciprocity between North Dakota and each state bordering North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Educational standards and practices board - Unified credential system. The educational standards and practices board, in cooperation with the department of public instruction, shall enter discussions with officials from each state bordering North Dakota to develop a unified system of licensure and credential qualifications or reciprocity between the states. The board shall report its progress, findings, and any pending action to the sixtieth legislative assembly.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 161

HOUSE BILL NO. 1358

(Representatives Herbel, Haas, Hanson, Williams)
(Senators Freborg, G. Lee)

TEACHER CONTRACT APPLICABILITY

AN ACT to amend and reenact section 15.1-15-12 of the North Dakota Century Code, relating to the applicability of teacher and administrator contracts; and to repeal section 15.1-15-03 of the North Dakota Century Code, relating to the employment of teachers and administrators after January first.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-15-12 of the North Dakota Century Code is amended and reenacted as follows:

15.1-15-12. Nonapplicable provisions. This chapter does not apply to:

1. Any individual employed to teach at an institution of higher education under the control of the state board of higher education;
2. Any individual employed to teach at the youth correctional center, North Dakota vision services - school for the blind, or the school for the deaf; ~~and~~
3. Any individual who replaces a teacher, a principal, or an assistant or associate superintendent while that teacher, principal, or assistant or associate superintendent is on a leave of absence or a sabbatical; and
4. Any individual employed by a school district as a teacher, a principal, an assistant superintendent, or an associate superintendent, provided the individual's term of employment begins on or after January first and does not extend beyond June thirtieth of the same school year.

SECTION 2. REPEAL. Section 15.1-15-03 of the North Dakota Century Code is repealed.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 162

SENATE BILL NO. 2210

(Senators Kringstad, Lyson, Robinson)

(Representatives Haas, L. Meier, Sitte)

EDUCATION FACTFINDING COMMISSION COMPENSATION

AN ACT to amend and reenact sections 15.1-16-03 and 15.1-16-04 of the North Dakota Century Code, relating to compensation for factfinders and members of the education factfinding commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-16-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-16-03. Education factfinding commission - Compensation. Each member of the commission is entitled to receive compensation at the rate of ~~eighty~~ ninety dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

SECTION 2. AMENDMENT. Section 15.1-16-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-16-04. Education factfinders - Compensation. Each factfinder appointed by the education factfinding commission, other than a commission member who serves as a factfinder, is entitled to receive compensation at the rate of ~~eighty~~ ninety dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 163

HOUSE BILL NO. 1076

(Education Committee)

(At the request of the Education Standards and Practices Board)

TEACHING LICENSES AND ESPB APPROVAL

AN ACT to create and enact a new section to chapter 15.1-09 and a new section to chapter 15.1-18 of the North Dakota Century Code, relating to approval of teachers by the education standards and practices board; and to amend and reenact sections 15.1-06-06, 15.1-13-13, 15.1-18-02, 15.1-18-07, 15.1-18-08, 15.1-18-09, 15.1-18-10, and 15.1-18.1-02 of the North Dakota Century Code, relating to teaching licenses and the approval of teachers by the education standards and practices board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁴ **SECTION 1. AMENDMENT.** Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher ~~holds a valid teaching certificate issued is licensed to teach by the education standards and practices board or approved to teach~~ by the education standards and practices board;
2. ~~Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 2;~~
3. The students are offered all subjects required by law; and
3. ~~4.~~ The school is in compliance with all local and state health, fire, and safety laws.

SECTION 2. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

Licensure to teach - Course area or field - Request for exception - Report.

1. If the board of a school district or of a nonpublic school is unable to fill a particular position by recruiting or assigning an individual who is licensed to teach in that particular course area or field, the school board

¹⁰⁴ Section 15.1-06-06 was also amended by section 12 of House Bill No. 1015, chapter 15, and section 2 of House Bill No. 1154, chapter 167.

may fill the position with an individual who is not licensed to teach in that particular course area or field, provided the individual:

- a. Is licensed to teach by the education standards and practices board or is approved to teach by the education standards and practices board;
 - b. Holds at least a minor or a minor equivalency in the course area or field in which the individual seeks to teach; and
 - c. Has received a temporary exception under this section.
2. The education standards and practices board shall adopt rules governing the issuance of temporary exceptions under this section. Except for a case of sudden and unexpected vacancy occurring during the school calendar, the rules must require consideration of a school board's efforts to fill a particular position and the school board's efforts to explore alternative methods of education delivery to the students. The rules must also require that the individual submit a plan for a course of study which will enable the individual to obtain a major or a major equivalency in the course area or field in which the individual seeks to teach.
3. An exception granted under this section is valid only through the conclusion of the school year in which the request for exception is submitted to the education standards and practices board. The board may extend the exception by one-year increments, provided the individual demonstrates successful completion of at least one-third of the total course of study prior to each requested extension.
4. At the conclusion of each school year, the education standards and practices board shall file a report with the legislative council. The report must cite all requests for exceptions under this section received by the board during the school year and must include the board's response to each request and a brief description of the board's rationale.

SECTION 3. AMENDMENT. Section 15.1-13-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-13. Provisional teaching license - Period of effectiveness - Renewal. The board may issue a provisional teaching license to an applicant awaiting, pending completion of the background check required by section 15.1-13-14 or pending the receipt of official transcripts or other original, signed, or certified documents. The provisional license is valid for a period of forty days and may be renewed with the approval of the board. The board may adopt rules governing the issuance of a provisional teaching license. An individual applying for a provisional teaching license may be charged a fee established by the board. However, an individual applying for the renewal of a provisional teaching license may not be charged a fee.

SECTION 4. AMENDMENT. Section 15.1-18-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-02. (Effective through June 30, 2006) Kindergarten through grade eight - Teacher qualifications - Exceptions.

1. In order to teach kindergarten, an individual must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and have a kindergarten endorsement; or
 - b. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrate to the satisfaction of the education standards and practices board that the individual will obtain a kindergarten endorsement within two years from the date of the assignment to teach kindergarten.
2. In order to teach any grade from one through eight, an individual must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and have a major, a minor, or an endorsement in elementary education; or
 - b. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrate to the satisfaction of the education standards and practices board that the individual will obtain an endorsement in elementary education within two years from the date of the assignment to teach any grade from one through eight.
3. Notwithstanding subsection 2, an individual may teach any grade from five through eight if the individual:
 - a. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and has a major or an endorsement in middle school education; or
 - b. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrates to the satisfaction of the education standards and practices board that the individual will obtain an endorsement in middle school education within two years from the date of assignment to teach any grade from five through eight.
4. Notwithstanding subsection 2, an individual may teach grade seven or eight if the individual is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and has a major or a minor in the assigned course area or field.
5. Notwithstanding subsection 2, an individual may teach special education, foreign language, art, music, physical education, business education, and computer education at any grade level from kindergarten through eight, provided the individual is licensed to teach by the education standards and practices board or approved to teach by the

education standards and practices board and meets the requirements imposed by the superintendent of public instruction.

6. An individual may obtain an endorsement by completing teaching requirements and the minimum number of credit hours in courses prescribed by the education standards and practices board.
7. This section does not apply to an eminence-credentialed teacher.

(Effective after June 30, 2006) Prekindergarten and kindergarten teacher qualifications - Exceptions. In order to teach prekindergarten and kindergarten, an individual must be ~~licensed~~:

1. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
- ~~1-2.~~ a. Have a major in elementary education and a kindergarten endorsement;
- ~~2-~~ b. Have a major equivalency in elementary education and a kindergarten endorsement;
- ~~3-~~ c. Have a major in elementary education and an early childhood education endorsement;
- ~~4-~~ d. Have a major equivalency in elementary education and an early childhood education endorsement;
- ~~5-~~ e. Have a major in early childhood education; or
- ~~6-~~ f. Have a major equivalency in early childhood education.

¹⁰⁵ **SECTION 5. AMENDMENT.** Section 15.1-18-07 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-07. (Effective after June 30, 2006) Elementary school teacher qualifications.

1. In order to teach any grade in an elementary school that offers grades one through six or in order to teach any grade in an elementary school that offers grades one through eight, an individual must be ~~licensed~~:
 - a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
 - ~~a-~~ b. (1) Have a major in elementary education; or
 - ~~b-~~ (2) Have a major equivalency in elementary education.

¹⁰⁵ Section 15.1-18-07 was also amended by section 9 of House Bill No. 1154, chapter 167.

2. Notwithstanding the provisions of subsection 1, an individual may teach any grade from one through three in an elementary school provided the individual is ~~licensed~~:
 - a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
 - a. b. (1) Has a major in early childhood education; or
 - b. (2) Has a major equivalency in early childhood education.

SECTION 6. AMENDMENT. Section 15.1-18-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-08. (Effective after June 30, 2006) Middle school teacher qualifications.

1. In order to teach any grade from five through eight in a middle school, an individual must be ~~licensed~~:
 - a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
 4. b. (1) Have a major in middle level education, with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas;
 2. (2) Have a major equivalency in middle level education, with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas; or
 3. (3) Have a major, a major equivalency, a minor, or a minor equivalency in each area taught by the individual and not defined by the education standards and practices board as a core academic area.
2. Notwithstanding the provisions of subsection 1, an individual may teach grade five or six in a middle school, provided the individual is:
 - a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and
 - b. (1) Has a major in elementary education; or
(2) Has a major equivalency in elementary education.

SECTION 7. AMENDMENT. Section 15.1-18-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-09. (Effective after June 30, 2006) High school qualifications. In order to teach grades seven through twelve, an individual must be ~~licensed~~:

1. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
4. 2. a. Have a major in the areas taught by the individual and defined by the education standards and practices board as core academic areas;
2. b. Have a major equivalency in the areas taught by the individual and defined by the education standards and practices board as core academic areas; or
3. c. Have a major, a major equivalency, a minor, or a minor equivalency in each area taught by the individual and not defined by the education standards and practices board as a core academic area.

SECTION 8. AMENDMENT. Section 15.1-18-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-10. (Effective after June 30, 2006) Specialty areas - Teacher qualification. Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, ~~and~~ special education, and technology education at any grade level from ~~one~~ kindergarten through grade eight, provided the individual:
 - a. Is licensed to teach by the education standards and practices board;
 - b. Is approved to teach in that area by the education standards and practices board; and
 - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.

SECTION 9. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Rural school districts - Federal flexibility. The education standards and practices board may extend the effective dates for any provision in chapter 15.1-18 if the United States secretary of education by rule, policy, or guidance authorizes such extension.

SECTION 10. AMENDMENT. Section 15.1-18.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18.1-02. National board certification program - Recertification - Board duties.

1. The board shall:
 4. a. Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.
 2. b. Collect and review in the order received scholarship applications from individuals who are licensed to teach by the board or approved to teach by the board.
 3. a. c. (1) Approve no more than seventeen applications per year under this subsection;
 - b. (2) During each year of the biennium, reserve three of the available scholarships under this subsection for individuals teaching at low-performing schools;
 - e. ~~During each year of the biennium, award no more than two of the remaining fourteen available scholarships to applicants employed by the same school district;~~
 - d. (3) Require the recipient for a scholarship under this subsection to serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and
 - e. (4) Require the recipient for a scholarship under this subsection to participate in mentoring programs ~~and teacher evaluation programs~~ developed and implemented in the employing school or school district.
 4. d. Ensure that all scholarship recipients under this subsection receive adequate information regarding the level of commitment required to acquire certification.
2. The board shall collect and review in the order received scholarship applications for national board recertification from individuals who are licensed to teach by the board or approved to teach by the board and:
 - a. Approve no more than two scholarship applications per year under this subsection;
 - b. Require each recipient for a scholarship under this subsection to serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and
 - c. Require each recipient for a scholarship under this subsection to participate in mentoring programs developed and implemented in the employing school or school district.
5. 3. If any individual who receives a scholarship under this section does not complete the certification process within the time allotted by the board, the individual must reimburse the state an amount equal to one-half of the amount awarded to the individual as a scholarship.

4. At the conclusion of each of the first four school years after an individual receives national board certification, the individual is entitled to receive an additional one thousand five hundred dollars if:
 - a. The individual served during the school year as a full-time classroom teacher in a public or nonpublic school; and
 - b. The individual participated in any efforts of the employing school district to develop and implement teacher mentoring programs.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 164

SENATE BILL NO. 2163

(Senators G. Lee, Freborg, Taylor)
(Representatives Hunsakor, Porter, Price)

STUDENT SELF-ADMINISTERED MEDICATION

AN ACT to create and enact a new section to chapter 15.1-19 of the North Dakota Century Code, relating to students' possession and self-administration of medication for the treatment of asthma and anaphylaxis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Asthma - Anaphylaxis - Self-administration of medication by student - Liability.

1. A student who has been diagnosed with asthma or anaphylaxis may possess and self-administer emergency medication for the treatment of such conditions provided the student's parent files with the school a document that is signed by the student's health care provider and which:
 - a. Indicates that the student has been instructed in the self-administration of emergency medication for the treatment of asthma or anaphylaxis;
 - b. Lists the name, dosage, and frequency of all medication prescribed to the student for use in the treatment of the student's asthma or anaphylaxis; and
 - c. Includes guidelines for the treatment of the student in the case of an asthmatic episode or anaphylaxis.
2. Neither a private school or a school district nor any employee of the private school or district is liable for civil damages incurred by:
 - a. A student who administers emergency medication to himself or herself in accordance with subsection 1.
 - b. An individual because a student was permitted to possess emergency medication in accordance with subsection 1.
3. For purposes of this section, "emergency medication" includes a prescription drug delivered by inhalation to alleviate asthmatic symptoms and an epinephrine autoinjectable pen.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 165

HOUSE BILL NO. 1048

(Representative Herbel)

HIGH SCHOOL REQUIRED UNITS

AN ACT to amend and reenact section 15.1-21-02 of the North Dakota Century Code, relating to required high school units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-02. (Effective through June 30, 2005) High schools - Required units. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:

1. Four units of English.
2. Three units of mathematics.
3. Four units of science.
4. Three units of social studies, including one of world history and one of United States history, both of which must emphasize geography.
5. One unit of health and physical education.
6. One unit of music.
7. Any six units selected from business education, economics and the free enterprise system, foreign language, American sign language, and career and technical education courses, including family and consumer sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers. The career and technical education courses may be offered through cooperative arrangements approved by the department of career and technical education.

(Effective after June 30, 2005) High schools - Required units.

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
 - a. Four units of English language arts;
 - b. Four units of mathematics;
 - c. Four units of science;
 - d. Four units of social studies, including one of world history and one of United States history;

- e. One-half unit of health ~~during each school year~~;
 - f. One-half unit of physical education ~~during each school year~~;
 - g. Two units of fine arts, at least one of which must be music;
 - h. Two units of the same foreign language; and
 - i. Two units of career and technical education.
2. Each unit which must be made available under subsection 1 must meet or exceed the state content standards.
 3. For purposes of this section, unless the context otherwise requires, "make available" means that:
 - a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least all the units provided in subsection 1;
 - b. If a student selects a unit from the list required by subsection 1, the public high school or the nonpublic high school shall provide the unit to the student; and
 - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.
 4. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
 5. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
 - a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
 - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
 6. The requirements of this section do not apply to alternative high schools or alternative high school education programs.

Approved March 18, 2005

Filed March 18, 2005

CHAPTER 166

HOUSE BILL NO. 1265

(Representatives Sitte, Grande, Kempenich, L. Meier)
(Senators Dever, O'Connell)

HOME EDUCATION OF DEVELOPMENTALLY DISABLED

AN ACT to amend and reenact sections 15.1-20-02, 15.1-23-13, 15.1-23-14, and 15.1-23-15 of the North Dakota Century Code, relating to home education of students with developmental disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-20-02. Compulsory attendance - Exceptions.

1. The provisions of section 15.1-20-01 do not apply if the person having responsibility for the child demonstrates to the satisfaction of the school board that:
 - a. The child is in attendance for the same length of time at an approved nonpublic school;
 - b. The child has completed high school;
 - c. The child is necessary to the support of the child's family;
 - d. A multidisciplinary team that includes the child's school district superintendent, the director of the child's special education unit, the child's classroom teacher, the child's physician, and the child's parent has determined that the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or
 - e. The child is receiving home education; ~~provided, however, that this exception is not available if the child has developmental disabilities as defined by subsection 4 of section 25-01.2-01.~~
2. A decision by the board of a school district under subsection 1 is appealable to the district court.

SECTION 2. AMENDMENT. Section 15.1-23-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-23-13. Home education - Disabilities - Services plan.

1. a. If a multidisciplinary assessment team, using eligibility criteria established by the superintendent of public instruction, determines that the child is disabled, that the child requires specially designed

instruction due to the disability, and that this instruction cannot be provided without special education and related services, the parent may continue to supervise home education, provided that:

- a. ~~The child does not have a developmental disability;~~
 - b. (1) The parent files with the school district superintendent a services plan that was developed privately or through the school district; and
 - e. (2) The services plan demonstrates that the child's special needs are being addressed by persons qualified to provide special education or related services.
 - b. If the multidisciplinary team determines that the child has a developmental disability, the parent may continue to supervise home education under the provisions of sections 15.1-23-14 and 15.1-23-15.
2. Annually, the superintendent of the child's school district of residence shall determine reasonable academic progress based on the child's services plan.
 3. If a parent fails to file a services plan as required by this section, the parent is deemed to be in violation of the compulsory school attendance provisions and may no longer supervise the home education of the child.
 4. A child who was once evaluated by a multidisciplinary assessment 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 child's services plan.

SECTION 3. AMENDMENT. Section 15.1-23-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-23-14. ~~Children with autism~~ Child with a developmental disability - Home education. ~~Notwithstanding any other law, a~~ A parent may supervise home education for a ~~developmentally disabled child with autism~~ a developmental disability if:

1. The child has been determined to ~~be autistic~~ have a developmental disability by a licensed psychologist;
2. The child's parent is qualified to supervise home education under this chapter; and
3. The child's parent files with the superintendent of the child's school district of residence:
 - a. A notice that the child will receive home education;
 - b. A copy of the child's diagnosis of ~~autism~~ a developmental disability prepared and attested to by a licensed psychologist; and

- c. A services plan developed and followed by the child's school district of residence and the child's parent; or, after providing written notice to the superintendent of the child's school district of residence, a substitute services plan, developed and followed, according to section 15.1-23-15, by a services plan team selected by and compensated by the child's parent.

SECTION 4. AMENDMENT. Section 15.1-23-15 of the North Dakota Century Code is amended and reenacted as follows:

15.1-23-15. ~~Children~~ Child with autism a developmental disability - Home education - Progress reports.

1. On or before November first, February first, and May first of each school year, a parent supervising home education for ~~an autistic~~ a child with a developmental disability under section 15.1-23-14 shall file with the superintendent of the child's school district of residence progress reports prepared by the services plan team selected under section 15.1-23-14. If at any time the services plan team agrees that the child is not benefiting from home education, the team shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team appointed by the superintendent of the child's school district of residence.
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.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 167

HOUSE BILL NO. 1154

(Education Committee)

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

PER STUDENT PAYMENTS AND TEACHER COMPENSATION

AN ACT to create and enact a new section to chapter 15.1-07 of the North Dakota Century Code, relating to educational association board reimbursement; to amend and reenact sections 15.1-06-04, 15.1-06-06, 15.1-07-28, 15.1-09-01, 15.1-12-26, 15.1-12-27, 15.1-12-29, 15.1-18-07, 15.1-22-01, 15.1-27-04, 15.1-27-05, 15.1-27-06, 15.1-27-07, 15.1-27-11, 15.1-27-15, 15.1-27-35, 15.1-27-37, 15.1-27-39, 15.1-27-40, 15.1-28-03, 15.1-29-03, 15.1-29-04, and 15.1-29-12 of the North Dakota Century Code and section 37 of chapter 667 of the 2003 Session Laws, relating to school calendars, school boards, teacher qualifications, school district dissolutions, the school district equalization factor, weighting factors, supplemental payments, isolated schools, and tuition payments; to repeal sections 15.1-09-42, 15.1-12-11.1, and 15.1-12-11.2 of the North Dakota Century Code, relating to instructional conferences and reorganization bonus payments; to provide for transportation grants; to provide for contingent payments; to provide for teacher compensation; to provide for a report to the legislative council; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-04. School calendar - Length.

1. During each school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
 - c. ~~Two days for the attendance of teachers at the North Dakota education association instructional conference; and~~
 - d. Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours; and
 - d. Two days for professional development activities.

2. a. In meeting the requirements for two days of professional development activities under subsection 1, a school district may require that its teachers attend the North Dakota education association instructional conference and may pay teachers for attending the conference, provided attendance is verified.
 - b. In meeting the requirements for two days of professional development activities under subsection 1, a school district may consider attendance at the North Dakota education association instructional conference to be optional, elect not to pay teachers for attending the instructional conference, and instead direct any resulting savings toward providing alternate professional development opportunities.
 3. A school district may not require the attendance of teachers in school or at any school-sponsored, school-directed, school sanctioned, or school related activities and may not schedule classroom instruction time nor alternate professional development activities on any day that conflicts with the North Dakota education association instructional conference.
2. 4. A full day of instruction consists of:
 - a. At least five and one-half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
 - b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
3. 5. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
4. 6. A school that does not qualify under the provisions of subsection 3 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.
5. 7. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.

¹⁰⁶ **SECTION 2. AMENDMENT.** Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher holds a valid teaching certificate issued is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 2 of House Bill No. 1076, as approved by the fifty-ninth legislative assembly;
3. The students are offered all subjects required by law; and
- ~~3.~~ 4. The school is in compliance with all local and state health, fire, and safety laws.

SECTION 3. AMENDMENT. Section 15.1-07-28 of the North Dakota Century Code is amended and reenacted as follows:

15.1-07-28. Educational association - Joint powers agreement - Approval Review by superintendent of public instruction - Criteria. ~~# Before school districts participating in an educational association governed by a joint powers agreements under chapter 54-40-3 wish to agreement may receive reimbursement for expenses any moneys, as provided in section 15.1-27-40, the school districts must request that the superintendent of public instruction approve their shall review the joint powers agreement. In order for the superintendent of public instruction to approve a joint powers agreement, the superintendent shall determine and annually and verify that:~~

1. ~~a.~~ The ~~participating~~ school districts ~~are contiguous;~~ and
- ~~b.~~ ~~(1)~~ The participating in the agreement have:
 - a. A combined total land mass of the participating school districts exceeds four at least five thousand eight hundred square miles [4035996 1502193 hectares];
 - ~~(2)~~ The
 - b. A combined total land mass of the participating school districts exceeds two at least four thousand five hundred square miles [647497 1165494 hectares] and the participating school districts number at least six twelve; or

¹⁰⁶ Section 15.1-06-06 was also amended by section 12 of House Bill No. 1015, chapter 15, and section 1 of House Bill No. 1076, chapter 163.

(3) The

- c. A combined total land mass of the participating school districts exceeds two at least four thousand five hundred square miles [1035995 hectares] and the total number of have at least three thousand students in average daily membership in the participating school districts exceeds two thousand five hundred.
- 2- The joint powers agreement provides that a school district contiguous to any school district already participating in the joint powers agreement may become a participant in the agreement at any time.
- 3- The joint powers agreement requires that the participating school districts agree to maintain a joint operating fund; agree to share administrative functions; or agree to implement various common requirements; provided that:
- a. If the participating school districts agree to establish a joint operating fund, the joint powers agreement must require that during the first school year following approval, the participating school districts shall establish a joint operating fund equal to at least two percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval; during the second school year following approval, the participating school districts shall establish a joint operating fund equal to at least four percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval; and during the fifth school year following approval, the participating school districts shall establish a joint operating fund equal to at least six percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval;
- b. If the participating school districts agree to share administrative functions, the joint powers agreement must require that during the first school year following approval, all of the participating districts shall share in the administration of at least three services; during the third school year following approval, all of the participating districts shall share in the administration of at least five services; and during the fifth school year following approval, all of the participating districts shall share in the administration of at least seven services; and that the list from which the participating districts must select the services to be shared consists of:
- (1) Federal title program management;
 - (2) Staff development;
 - (3) Special education delivery;
 - (4) Curriculum development or delivery;
 - (5) Career and technical education delivery;
 - (6) Student instructional support;

- (7) Media and technology;
 - (8) Business management;
 - (9) Distance learning;
 - (10) Student counseling;
 - (11) Food and nutrition;
 - (12) Facility safety and health;
 - (13) School accreditation and improvement; and
 - (14) Transportation; and
- e. If the participating school districts agree to implement various common requirements, the joint powers agreement must require that during the first school year following approval, all of the participating districts shall implement at least three requirements; during the third school year following approval, all of the participating districts shall implement at least six requirements; and during the fifth school year following approval, all of the participating districts shall implement at least eight requirements; and that the list from which the participating districts must select the requirements to be implemented consists of:
- (1) A common school calendar;
 - (2) A common class schedule;
 - (3) A common intranet communication system;
 - (4) A common class registration process for grades seven through twelve;
 - (5) A common curriculum for each grade level from kindergarten through six;
 - (6) A common student data system;
 - (7) A common school improvement and staff development process;
 - (8) Common services, as set forth in a five-year plan;
 - (9) A school facilities plan; and
 - (10) Joint funding of dual credit and advance placement courses; or
- d. A combined total land mass of at least one thousand five hundred square miles [388498 hectares] and have at least seven thousand five hundred students in average daily membership.

2. The school districts participating in the agreement are contiguous to each other or, if the districts are not contiguous to each other, the superintendent of public instruction shall verify that the participating districts can provide sound educational opportunities to their students in a fiscally responsible manner without injuring other school districts or educational associations governed by joint powers agreements and without negatively impacting the ability of other school districts or educational associations governed by joint powers agreements from providing sound educational opportunities to their students in a fiscally responsible manner. A decision by the superintendent of public instruction under this subsection may be appealed to the state board of public school education. A decision by the state board is final.
3. The joint powers agreement requires that the participating school districts maintain a joint operating fund and share various administrative functions and student services in accordance with subsection 4.
4. a. During the first two school years in which an educational association governed by a joint powers agreement is operational, each of the participating school districts shall share in at least two administrative functions and two student services, selected by the district.

b. During the third and fourth school years in which an educational association governed by a joint powers agreement is operational, each of the participating school districts shall share in at least three administrative functions and three student services, selected by the district.

c. During the fifth school year in which an educational association governed by a joint powers agreement is operational, and each year thereafter, each participating school district shall share at least five administrative functions and five student services, selected by the district.

d. For purposes of this subsection:

 - (1) "Administrative functions" means:
 - (a) Business management;
 - (b) Career and technical education services management;
 - (c) Curriculum mapping or development;
 - (d) Data analysis;
 - (e) Federal program support;
 - (f) Federal title program management;
 - (g) Grant writing;
 - (h) School improvement;

- (i) School safety and environment management;
 - (j) Special education services management;
 - (k) Staff development;
 - (l) Staff retention and recruitment;
 - (m) Staff sharing;
 - (n) Technology support; and
 - (o) Any other functions approved by the superintendent of public instruction.
 - (2) Student services means:
 - (a) Advanced placement classes;
 - (b) Alternative high schools or alternative high school programs;
 - (c) Career and technical education classes;
 - (d) Counseling services;
 - (e) Common elementary curricula;
 - (f) Distance learning classes;
 - (g) Dual credit classes;
 - (h) Foreign language classes;
 - (i) Library and media services;
 - (j) Summer programs;
 - (k) Supplemental instruction programs; and
 - (l) Any other services approved by the superintendent of public instruction.
 - e. For purposes of this subsection, if an educational association governed by a joint powers agreement became operational before July 1, 2005, the 2005-06 school year must be considered the association's first year of operation.
5. The joint powers agreement provides:
- a. Criteria for the future participation of school districts that were not parties to the original joint powers agreement;
 - b. An application process by which school districts that were not parties to the original joint powers agreement can become participating districts; and

- c. A process by which school districts that were not parties to the original joint powers agreement and whose application to participate in the agreement was denied can appeal the decision to the superintendent of public instruction.
4. 6. The joint powers agreement provides for the employment and compensation of a ~~chief administrator and other~~ any staff necessary to carry out the provisions of the agreement and the requirements of this section and section 15.1-27-37 Act.
7. The joint powers agreement provides for a governing board that consists only of individuals who serve on the boards of the participating school districts or designees of the respective school board members, provided however that a joint powers agreement may allow for the inclusion of ex officio nonvoting members on the educational association's board.
8. The joint powers agreement provides that the board of the educational association shall meet at least quarterly.
9. The joint powers agreement does not permit the educational association to compensate members of the educational association board for attending meetings of the board and that it does not permit the educational association to reimburse members of the board for any expenses incurred in attending meetings of the educational association board.

SECTION 4. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

Compensation - Reimbursement - Extraordinary service. The board of an educational association established under section 15.1-07-28 may provide compensation and reimbursement to any board member who, at the direction of the board, performs extraordinary service on behalf of the board. For purposes of this section, "extraordinary service" means duties beyond those reasonably expected of members of the board and includes travel to and attendance at national meetings or conventions.

SECTION 5. AMENDMENT. Section 15.1-09-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-01. School board membership - Size and term adjustments.

1. The board of a school district ~~is~~ must be composed of five, seven, or nine members; unless:
 - a. The electors of the district increase the size of the board under this section;
 - b. The size of the board was increased under a prior law; or
 - c. The board, on July 1, 1971, was composed of more or fewer than five members, in which case the number of members must remain unchanged unless increased under this section.

2. The size of ~~any a~~ school district board may be increased to ~~either five, seven, or nine members or decreased to seven or five members~~ if a petition is signed by qualified electors of the school district equal in number to at least one-third of those who voted at the most recent annual school district election and the change is approved by a majority of the qualified electors of the school district voting on the question at a special election called for that purpose.
3. If a majority of the qualified voters in a school district elect to increase the size of the school board, the additional members must be elected to the board at the next annual school district election in the same manner as other board members.
 - a. If the total number of board members after approval of the increase is ~~five, the terms of two members extend until the first annual election, the terms of two members extend until the second annual election, and the term of the remaining member extends until the third annual election.~~
 - b. If the total number of board members after approval of the increase is seven, the terms of three members extend until the first annual election, the terms of two members extend until the second annual election, and the terms of the remaining two members extend until the third annual election.
 - c. If the total number of board members after approval of the increase is nine, the terms of three members extend until the first annual election, the terms of three members extend until the second annual election, and the terms of the remaining three members extend until the third annual election.
 - d. c. The length of the terms specified in this ~~section~~ subsection must be determined by lot.
 - e. d. All board members shall serve for the terms specified in this ~~section~~ subsection and until their successors are elected and qualified.
 - f. e. The length of any term in existence before the increase in board membership and held by a board member who is duly qualified may not be modified.
 - g. f. Terms subsequent to the first term are for the normal period of three years and extend until a successor is elected and qualified.
4. If on July 1, 2005, the board of any school district contains only three members, the board must be increased to five members and the additional members must be elected at the next annual school district election, in the same manner as other board members. The initial term of one additional member must be one year and the initial term of the other additional member must be two years. The length of the terms specified in this subsection must be determined by lot. Thereafter, the size of the board may be increased in accordance with subsections 2 and 3.

5. The voters of a school district shall elect school board members at large. If, however, the district has been reorganized, board members may be elected at large, by geographical area, or at large by geographical area.
- ~~5.~~ 6. An election on a reorganization proposal takes the place of the petition and election requirements of this section. Approval of the reorganization proposal has the same effect as if the approval were by the election provided for in this section.
- ~~6.~~ 7. If the qualified electors of a district approve a reduction in the size of the school board, the excess number of members will serve out existing terms until the number approved by the electors has been reached.
- ~~7.~~ 8. If the board of a school district has elected to convert its members' terms to four years and has also increased the number of its board members, the board by lot or by some other random selection method shall provide for a combination of initial terms of office not to exceed four years for the new members. The combination must equalize to the greatest extent possible the number and length of terms for old board members and for new members to be elected during the next three election years. The members' terms must be staggered and must expire in even-numbered years.
- ~~8.~~ 9. Notwithstanding the provisions of this section, the board of education of the city of Fargo consists of nine members.

SECTION 6. AMENDMENT. Section 15.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-26. Dissolution of school district - Grounds.

1. A county committee shall initiate proceedings to dissolve a school district and attach the property to other operating high school districts when it is notified in writing by the county superintendent of schools whose jurisdiction includes the administrative headquarters of the district that:

 - a. The district is financially unable to effectively and efficiently educate its students;
 - b. The district has not operated a school as required by section 15.1-12-24; or
 - c. A school board has determined that dissolution is in the best interest of its students.
2. Except as provided in subsection 3, a county committee shall initiate proceedings under section 15.1-12-27 to attach real property to an operating high school district when it is notified in writing by the county superintendent that:

 - a. Real property has been severed from its school district by the expansion of a city and the severed portion is not contiguous with its district; or
 - b. There exists real property that does not belong to a school district.

3. If a school district reorganization plan which does not include all real property in a district is approved by the electors, the county committee shall, within forty-five days after the election, hold a hearing under section ~~45.1-12-29~~ 15.1-12-27 to attach the remaining property to one or more operating high school districts.
4. Receipt of notice by a county committee under this section:
 - a. Renders an annexation petition involving any real property in the district void, unless the annexation has already been approved by the state board; and
 - b. Prohibits the acceptance of a new annexation petition involving any real property in the district until all dissolution proceedings have been completed.
5. One or more annexation petitions may not be used to annex all of the real property in a school district to surrounding school districts.

¹⁰⁷ **SECTION 7. AMENDMENT.** Section 15.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-27. Dissolution of school district - Notice - Hearing - Order of attachment.

1. The county superintendent shall schedule and give notice of a public hearing regarding the dissolution of the district and the subsequent attachment of the property to other high school districts. The county superintendent shall publish the notice in the official newspaper of each county that encompasses property in the dissolving district and in the official newspaper of each county that encompasses property in a high school district adjacent to the dissolving district, at least fourteen days before the date of the hearing. The county superintendent shall provide notice of the public hearing to the business manager of each high school district adjacent to the dissolving district.
2. At the hearing, the board of the dissolving district may propose a particular manner of dissolution.
3. The county committee shall consider testimony and documentary evidence regarding:
 - a. The value and amount of property held by the dissolving school district;
 - b. The amount of all outstanding bonded and other indebtedness;
 - c. The distribution of property and assets among the high school districts to which the dissolved district is attached;

¹⁰⁷ Section 15.1-12-27 was also amended by section 4 of House Bill No. 1160, chapter 159.

- d. The taxable valuation of the dissolving district and adjacent high school districts and the taxable valuation of adjacent high school districts under the proposed manner of dissolution;
 - e. The size, geographical features, and boundaries of the dissolving district and of adjacent high school districts;
 - f. The number of students in the dissolving district and in adjacent high school districts;
 - g. The general population of the dissolving district and adjacent high school districts;
 - h. Each school in the dissolving district and in adjacent high school districts, including its name, location, condition, accessibility, and the grade levels it offers;
 - i. The location and condition of roads, highways, and natural barriers in the dissolving district and in adjacent high school districts;
 - j. Conditions affecting the welfare of students in the dissolving district and in adjacent high school districts;
 - k. The boundaries of other governmental entities;
 - l. The educational needs of communities in the dissolving district and in adjacent high school districts;
 - m. Potential savings in school district transportation and administrative services;
 - n. The anticipated future use of the dissolving districts' buildings, sites, and playfields;
 - o. The potential for a reduction in per student valuation disparities between the high school districts to which the dissolved district is attached;
 - p. The potential to equalize or increase the educational opportunities for students from the dissolving district and for students in adjacent high school districts; and
 - q. All other relevant factors.
- 4. After the hearing, the county committee shall make findings of fact. Subject to final approval by the state board, the county committee may order the district dissolved and its real property attached to one or more contiguous, operating high school districts.
 - 5. Any property ordered attached under this section must have at least one minor residing within its boundaries.
 - 6. The county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the dissolution proceeding together with a copy of the county committee's order to the state board for final approval of the dissolution. The state board shall

publish notice of its meeting at which it will consider the dissolution, in the official newspapers of the counties required for publication under subsection 1, at least fourteen days before the meeting.

7. The order of dissolution becomes effective July first following approval by the state board, unless the county committee provides for a different effective date.
8. If the boundaries of the dissolving school district cross county lines, the proceeding to dissolve the district must be conducted jointly by the county committees representing counties containing twenty-five percent or more of the dissolving district's taxable valuation. If, after the hearing, a majority of the county committees are unable to agree upon an order of dissolution and attachment, the county superintendent of the county in which the administrative headquarters of the dissolving school district is located shall notify the state board. The state board shall conduct a public hearing, as required in this section, and order the dissolution of the district and the attachment of its real property to adjacent high school districts in the manner it deems appropriate. The state board shall publish notice of the public hearing in the official newspapers of the counties required for publication under subsection 1, at least fourteen days before the date of the hearing.
9. If any portion of the order providing for the attachment of real property is suspended or voided, the order of dissolution is likewise suspended or voided.

¹⁰⁸ **SECTION 8. AMENDMENT.** Section 15.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-29. Dissolution of school district - Unobligated cash balance - Tax credits or refunds.

1. Any After ten thousand dollars is set aside, as required by section 15.1-12-28, and after the required amount is deposited in the reimbursement account for job service North Dakota, as required by section 15.1-12-28.1, any remaining unobligated cash balance in excess of ten thousand dollars, up to an amount equaling a dissolved school district's general fund expenditure for the last school year before the district's dissolution is a credit for real property owners within the boundaries of the dissolved school district, against taxes levied by the district in to which their property is now situated. The county auditor shall base the credit on the five-year average of the total mills levied for education by the dissolved district attached. If property from the dissolved district is attached to more than one school district, the percentage of the total credit that to which each eligible real property owners receive must be owner is entitled must equal the same percentage of the unobligated cash balance as the that the taxable valuation of the individual's real property bears to the total taxable

¹⁰⁸ Section 15.1-12-29 was also amended by section 7 of House Bill No. 1160, chapter 159.

valuation of the dissolved district's property at the time of the attachment order.

2. Upon approval of the board of county commissioners, any school district required to provide a tax credit under subsection 1 may provide a cash refund in lieu of the tax credit. At the request of the county auditor, the school district holding the unobligated cash balance available under subsection 1 shall pay to the county treasurer the amount to be paid to those who own real property within the dissolved district. The treasurer shall issue the refund to the owner of the property as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against the property, the treasurer shall first apply the property owner's tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the dissolved district during the last year taxes were levied.
3. After the requirements of subsection 1 have been met, the county auditor shall distribute any remaining unobligated cash balance among the school districts to which the real property of the dissolved district was attached. The percentage of the remaining unobligated cash balance to which each school district is entitled equals that percentage of the dissolved district's total taxable valuation which was attached to the receiving school district.

¹⁰⁹ **SECTION 9. AMENDMENT.** Section 15.1-18-07 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-07. (Effective after June 30, 2006) Elementary school teacher qualifications.

1. In order to teach any grade ~~from one through six~~ in an elementary school that offers grades one through six, or in order to teach any grade in an elementary school that offers grades one through eight, an individual must be licensed:
 - a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
 - a. b. (1) Have a major in elementary education; or
 - b. (2) Have a major equivalency in elementary education.
2. Notwithstanding the provisions of subsection 1, an individual may teach any grade from one through three in an elementary school provided the individual is ~~licensed~~:

¹⁰⁹ Section 15.1-18-07 was also amended by section 5 of House Bill No. 1076, chapter 163.

- a. Licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board; and:
- a. b. (1) Has a major in early childhood education; or
- b. (2) Has a major equivalency in early childhood education.
- 3. In order to teach any grade from one through eight in a self-contained classroom, an individual must be licensed to teach by the education standards and practices board and:
 - a. Have a major in elementary education; or
 - b. Have a major equivalency in elementary education.

SECTION 10. AMENDMENT. Section 15.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-22-01. Kindergarten - Establishment by board - Petition for establishment Request by parent - Levy.

1. Upon its own motion, the board of a school district may establish a free public kindergarten ~~for the instruction during a school year of resident children below school age.~~
2. If the board receives a ~~petition signed by qualified electors residing in the district equal in number to at least twenty percent of those who voted in the most recent annual school district election, the board must submit the question of establishing a kindergarten to the electorate at the next annual or special school district election. The margins of electoral approval provided in section 57-15-14 must be applied~~ written request to provide kindergarten from the parent of a student who will be enrolled in the kindergarten, the board shall either provide at least a half-day kindergarten program for the student or pay the tuition required for the student to attend at least a half-day kindergarten program in another school district.
3. The board of a school district that establishes a kindergarten under this section may levy a tax pursuant to subdivision p of subsection 1 of section 57-15-14.2.

SECTION 11. AMENDMENT. Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-04. Per student payment. The per student payment to which each school district is entitled for the first year of the biennium is two thousand ~~five~~ seven hundred ~~nine~~ sixty-five dollars. The per student payment to which each school district is entitled for the second year of the biennium is two thousand ~~six~~ eight hundred ~~twenty-three~~ seventy-nine dollars. The per student amount is the basis for calculating state payments to school districts, as provided in sections 15.1-27-06 and 15.1-27-07.

SECTION 12. AMENDMENT. Section 15.1-27-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-05. (Effective through June 30, 2008) School district equalization factor.

1. To determine the amount of payments due a school district, the superintendent of public instruction shall add the tuition apportionment payments, per student payments, special education aid, transportation aid, and teacher compensation payments for which a school district is eligible and from that total subtract the following:
 - a. The product of ~~thirty-six~~ thirty-eight mills times the taxable valuation of property in the district;
 - b. The amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars; and
 - c. If the mills levied by the district for general fund purposes, plus the mills levied for high school transportation and high school tuition purposes are fewer than one hundred forty, the number of mills by which the district's levies are below one hundred forty multiplied by the taxable valuation of property in the district.
2. Beginning July 1, 2006, and each year thereafter, the number of mills used by the superintendent of public instruction in determining the product required by subdivision a of subsection 1 must be increased by ~~two~~ three over the number of mills used in determining the product required by that subdivision the previous year.

(Effective after June 30, 2008) School district equalization factor.

1. To determine the amount of payments due a school district, the superintendent of public instruction shall add the tuition apportionment payments, per student payments, special education aid, transportation aid, and teacher compensation payments for which a school district is eligible and from that total subtract the following:
 - a. The product of the number of mills prescribed in subsection 2 times the taxable valuation of property in the district;
 - b. The amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty-five percent of its actual expenditures, plus twenty thousand dollars; and
 - c. If the mills levied by the district for general fund purposes, plus the mills levied for high school transportation and high school tuition purposes are fewer than one hundred forty, the number of mills by which the district's levies are below one hundred forty multiplied by the taxable valuation of property in the district.
2. The number of mills used by the superintendent of public instruction in determining the product required by subdivision a of subsection 1 must be increased by ~~two~~ three over the number of mills used in determining the product required by that subdivision the previous year.

SECTION 13. AMENDMENT. Section 15.1-27-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-06. Per student payments - Weighting factors - High school students. The superintendent of public instruction shall make payments each year, as provided for in this section, 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 15.1-27-21.

1. Each district having under ~~seventy-five~~ one hundred twenty students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor ~~1.625 adjusted by eighty-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, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. ~~Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.~~
2. Each district having at least ~~seventy-five~~ one hundred twenty but fewer than ~~one~~ three hundred ~~fifty~~ students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor ~~1.335 adjusted by eighty-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, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. ~~Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.~~
3. Each district having at least ~~one~~ three hundred ~~fifty~~ but fewer than ~~five hundred fifty~~ students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor ~~1.24 adjusted by eighty-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, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. ~~Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.~~
4. Each district having at least five hundred fifty students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor ~~1.14 adjusted by eighty-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, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in

~~section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.~~

- ~~5.~~ 4. Each district having an approved alternative high school education program is entitled to receive the amount of money that results from multiplying the factor in:
- a. Subsection 1 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if fewer than ~~seventy-five~~ one hundred twenty students in average daily membership are enrolled in the alternative education program.
 - b. Subsection 2 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least ~~seventy-five~~ one hundred twenty but fewer than ~~one~~ three hundred ~~fifty~~ students in average daily membership are enrolled in the alternative education program.
 - c. Subsection 3 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least ~~one~~ three hundred ~~fifty~~ but fewer than ~~five~~ hundred fifty students in average daily membership are enrolled in the alternative education program.
 - ~~d. Subsection 4 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least five hundred fifty students in average daily membership are enrolled in the alternative education program.~~
- ~~6.~~ 5. In order to be eligible for enumeration under this section, a student:
- a. Must have completed the work of the eighth grade;
 - b. Must not have completed the work of the twelfth grade; and
 - c. Must be a resident of this state or a nonresident attending a school in this state under the auspices of a foreign student exchange program.
6. In calculating payments under this section and subsections 1 through 4 of section 15.1-27-07, the superintendent of public instruction shall use 1.0 as the factor that represents the lowest five-year average cost of education among all elementary and high school weighting categories other than kindergarten and shall use proportionately increased factors to represent the five-year average cost of education in all remaining weighting categories except kindergarten.

SECTION 14. AMENDMENT. Section 15.1-27-07 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-07. Per student payments - Weighting factors - Elementary school students. The superintendent of public instruction shall make payments

each year, as provided for in this section, to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, subject to adjustment as provided in section 15.1-27-21.

4. a. Each district having only a one-room rural school is entitled to receive the amount of money that results from multiplying the factor 1.28 adjusted by eighty-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, by the number of students in average daily membership in grades one through eight in that school, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment level provided for in this subdivision is applicable only to the first sixteen students.
 - b. If the one-room rural school has more than sixteen students in average daily membership in grades one through eight, the district in which the school is located is entitled to receive ninety percent of the per student payment provided for in section 15.1-27-04 for each additional student. The district is not entitled to any payment for more than twenty students in average daily membership.
 - c. If a one-room rural school is located in a district having 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 this section.
 - d. If a 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.
2. 1. Except as provided in subsection 4, each Each school district having fewer than one hundred students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor 1.09 adjusted by eighty-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, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first twenty-five students in average daily membership per classroom or per teacher.
 3. 2. Each school district having at least one hundred students but fewer than one thousand students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor .905 adjusted by eighty-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, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher.

4. Each school district having at least one thousand students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor .95 adjusted by eighty-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, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of the education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher.
- 5- 3. Each school district having students in grades seven and eight is entitled to receive the amount of money that results from multiplying the factor 1.04 adjusted by eighty-five percent of the difference between 1.04 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades seven and eight in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher. The payments provided for in this subsection are not available for students who attend a one-room rural school if that school is the only one in the district that offers educational services to students in grades seven and eight.
- 6- 4. Each school district having a special education program approved by the director of special education is entitled to receive, for each student who is enrolled in the program and who is at least three years of age but less than the compulsory age for school attendance, the amount of money that results from multiplying the factor 1.04 adjusted by eighty-five percent of the difference between 1.04 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of special education students in average daily membership in the program who are at least three years of age but less than the compulsory age for school attendance, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.

- ~~7.~~ 5. a. Each school district operating a kindergarten as provided for in section 15.1-22-02 is entitled to receive the amount of money that results from multiplying the factor ~~.50 adjusted by eighty-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, by the number of kindergarten students in average daily membership in the district, times the per student payment provided for in section 15.1-27-04. ~~Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.~~ The payment provided for in this subsection is applicable only to the first twenty-five students in average daily membership per classroom or per teacher.
- b. In order to receive the full per student payment available under this section, a district must operate a kindergarten program that provides the equivalent of ninety full days of classroom instruction during a twelve-month period. A district is entitled to a prorated payment under this section if it operates a kindergarten program of shorter duration.
- ~~8.~~ 6. Each school district that educates students who are also enrolled in nonpublic schools is entitled to receive proportionate payments under this section.
- ~~9.~~ 7. Each school district is entitled to receive 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.
- ~~10.~~ 8. A school district is not entitled to any payments provided for by this chapter unless each teacher employed by the district:
- a. Holds a teaching license issued by the education standards and practices board; or
- b. Has been approved to teach by the education standards and practices board.
9. In calculating payments under subsections 1 through 4 and under section 15.1-27-06, the superintendent of public instruction shall use 1.0 as the factor that represents the lowest five-year average cost of education among the elementary and high school weighting categories other than kindergarten and shall use proportionately increased factors to represent the five-year average cost of education in all remaining weighting categories except kindergarten.

¹¹⁰ **SECTION 15. AMENDMENT.** Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

¹¹⁰ Section 15.1-27-11 was also amended by section 1 of House Bill No. 1032, chapter 169.

15.1-27-11. High school districts - Supplemental payments.

1. 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 sum of:
 - a. The district's latest available net assessed and equalized taxable valuation of property; plus
 - b. All tuition payments and county ~~and unrestricted federal~~ revenue received by the district, divided by the total of the district's general fund levy, high school transportation levy, and high school tuition levy.
2. ~~If the~~ The superintendent of public instruction shall verify that:
 - a. The quotient arrived at under subsection 1 is less than the latest available statewide average taxable valuation per student and if the;
 - b. The district's educational expenditure per student is below the most recent available statewide average cost of education per student;
 - c. The district has a general fund levy of at least one hundred eighty mills; and
 - d. The district's unobligated general fund balance on the preceding June thirtieth is not in excess of thirty-five percent of its actual expenditures, plus twenty thousand dollars.
3. If the superintendent of public instruction determines that the district meets all the requirements of subsection 2, the superintendent of public instruction shall:
 - a. Determine the difference between the latest available statewide average taxable valuation per student and the average taxable valuation per student in the high school district;
 - b. Multiply the result determined under subdivision a by the number of students in average daily membership in grades one through twelve in the high school district;
 - c. Multiply the result determined under subdivision b 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
 - d. Multiply the result determined under subdivision c by a factor calculated by the superintendent of public instruction to result in the expenditure, over the course of the biennium, of the full amount provided for the purpose of this section.
- e- 4. The result of the calculations under this section is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15.1-27.

SECTION 16. AMENDMENT. Section 15.1-27-15 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-15. Per student payments - Isolated schools.

1. If an elementary school has fewer than fifty students and fifteen percent or more of its students would have to travel beyond a fifteen-mile [24.15-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15.1-27-07 must be increased by ~~twenty~~ twenty-five percent ~~for the first fifteen students~~. If the school has fewer than fifteen students, the payment received must be for fifteen students.
2. If a high school has fewer than thirty-five students and fifteen percent or more of its students would have to travel beyond a twenty-mile [32.2-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15.1-27-06 must be increased by ~~twenty~~ twenty-five percent ~~for the first twenty students~~. If the school has fewer than twenty students, the payment received must be for twenty students.

SECTION 17. AMENDMENT. Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-35. Average daily membership - Calculation. Average daily membership is calculated by adding the total number of days that each student in a given classroom, school, or school district is in attendance during a school calendar and the total number of days that each student in a given classroom, school, or school district is absent during a school calendar, and then dividing the sum by one hundred eighty. For purposes of calculating average daily membership, all students are deemed to be in attendance on:

1. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
2. The two days set aside for ~~the attendance of teachers at the North Dakota education association instructional conference~~ professional development activities under section 15.1-06-04; and
3. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.

SECTION 18. AMENDMENT. Section 15.1-27-37 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-37. Compensation of teachers - Claim for reimbursement - Rules.

1. On or before October first of each year or within thirty days after the conclusion of the negotiation process provided for in chapter 15.1-16, the board of a school district may file a claim with the superintendent of public instruction for the reimbursement of moneys to be expended by the district during the school year to at least maintain the level of

compensation provided to teachers employed by the district during the ~~2002-03~~ preceding school year.

2. The claim must include:
 - a. The number of full-time equivalent teachers employed by the district as of September fifteenth of the current school year;
 - b. The number of full-time equivalent teachers whose level of compensation will be at least equal to that provided during the ~~2002-03~~ preceding school year; and
 - c. The total amount of any compensation increases provided to full-time equivalent teachers over the level of compensation provided during the ~~2002-03~~ preceding school year.
3.
 - a. ~~For the 2003-04 school year, the~~ The reimbursement provided for in this section may not exceed three thousand dollars multiplied by the number of full-time equivalent teachers employed by the district as of September ~~15, 2003~~.
 - b. ~~For the 2004-05 school year, the reimbursement provided for in this section may not exceed three thousand dollars multiplied by the number of full-time equivalent teachers employed by the district as of September 15, 2004.~~
 - c. ~~For the 2003-04 school year, the~~ fifteenth of the current school year.
 - b. The reimbursement under this section for each individual employed as of September ~~15, 2003~~ fifteenth of the current school year, as a full-time equivalent teacher for the first school year since becoming licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board, may not exceed one thousand dollars.
 - d. ~~For the 2004-05 school year, the reimbursement under this section for each individual employed as of September 15, 2004, as a full-time equivalent teacher for the first school year since becoming licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board, may not exceed one thousand dollars.~~
4. For purposes of this section, the claim of a district may include proportionate expenditures made by the district to compensate individuals employed as teachers by the special education unit or the area career and technology center to which the district belongs.
5. The superintendent of public instruction may adopt rules regarding claims for and the payment of reimbursements under this section.

SECTION 19. AMENDMENT. Section 15.1-27-39 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-39. Annual salary - Minimum amount.

1. Beginning with the ~~2003-04~~ 2005-06 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a minimum salary level for the contract period equal to at least ~~twenty-one~~ twenty-two thousand dollars.
2. Beginning with the ~~2004-05~~ 2006-07 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a minimum salary level for the contract period equal to at least ~~twenty-one~~ twenty-two thousand five hundred dollars.

SECTION 20. AMENDMENT. Section 15.1-27-40 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-40. Approved joint powers agreement - Reimbursement by superintendent of public instruction Report of expenses.

1. The individual employed as a chief administrator for the purpose of carrying out the provisions of a joint powers agreement and any requirements under section 15.1-07-27 shall executive director of an educational association governed by a joint powers agreement which the superintendent of public instruction has verified as meeting the requirements of section 15.1-07-28 shall annually submit to the superintendent of public instruction, at the time and in the manner designated by the superintendent, receipts for expenses incurred during a school year in delivering services and programs under section 15.1-07-27.
2. The superintendent of public instruction, upon verifying the receipts, shall reimburse the chief administrator of the joint powers agreement for any expenses incurred in delivering services and programs under the auspices of the joint powers agreement as provided in section 15.1-07-27. The reimbursement may not exceed the lesser of:
 - a. The total expenses incurred in delivering services and programs under section 15.1-07-27; or
 - b. Fifty thousand dollars.
3. The chief administrator a report detailing all expenses incurred by the educational association and shall attribute the expenses on a per student basis by participating school district.
2. The executive director shall deposit any moneys received under subsection 2 in the participating districts' by or on behalf of the association into the educational association's joint operating fund.
4. The superintendent of public instruction may not provide any reimbursement to a chief administrator under this section unless the joint powers agreement under which the services and programs are delivered has been approved by the superintendent.

SECTION 21. AMENDMENT. Section 15.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-28-03. State tuition fund - Apportionment - Payment. On or before the third Monday in each January, February, March, April, August, September,

October, November, and December, the office of management and budget shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion the fund among the school districts of the state in proportion to the number of school-age children residing in each district, as shown by the latest enumeration provided for by law and pay the amount apportioned to each school district. The superintendent shall make the payments required by this section at the same time as the per student payments required under chapter 15.1-27.

SECTION 22. AMENDMENT. Section 15.1-29-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-03. Education of students in other districts - Payment of tuition and transportation.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board ~~may~~ shall pay for the students' tuition for the students and transportation. The board may arrange, and when petitioned to do so by qualified electors of the district equal in number to at least a majority of those who voted in the most recent annual school district election shall arrange, with other boards to send students to the other districts and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The board of the students' school district of residence shall pay for the students' tuition to the admitting district and transportation. For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district.

SECTION 23. AMENDMENT. Section 15.1-29-04 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments. ~~If a school board approves the payment of the board of a school district agrees to pay tuition for a student attending school in another district or if a district under this chapter, if it is required to make pay tuition payments under the provisions of this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual tuition charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due.~~

SECTION 24. AMENDMENT. Section 15.1-29-12 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-12. Tuition payments - Determination.

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education incurred by the admitting district.
2.
 - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
 - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
 - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
 - (1) The weighted per student payment received by the admitting district, less the average amount per North Dakota resident student enrolled in the school district realized from the deductions applied under section 15.1-27-06; and
 - (2) Any credit for taxes paid to the admitting district by the student's parent.
 - d. The amount remaining is the full cost of education incurred by the admitting district and the tuition amount payable for the individual student.
- 3- ~~If the student's school district of residence and the student's parent are both paying tuition, the credit allowed under subdivision e of subsection 2 for taxes paid to the admitting district by the student's parent must be proportionately credited to the student's district of residence and the student's parent.~~
- 4- This chapter does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

SECTION 25. TRANSPORTATION GRANTS - DISTRIBUTION.

1. During each year of the 2005-07 biennium, the superintendent of public instruction shall distribute from the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, fifty percent of \$33,500,000 as state transportation aid payments.
2.
 - a. During the first year of the biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement for in-city mileage at the rate of fifty cents for

schoolbuses having a capacity of ten or more students and reimbursement for vehicles having a capacity of nine or fewer students and transporting students who live outside the incorporated limits of a city at the rate of forty cents per mile. The superintendent of public instruction shall use the latest available student enrollment count in each school district.

- b. During the second year of the biennium, the superintendent of public instruction shall distribute to each school district the same amount that the district received under this section for transportation services provided during the first year of the biennium.
3. If insufficient moneys exist to fully meet the requirements of this section, the superintendent of public instruction shall prorate the payments according to the percentage of the total amount to which each school district is entitled.
4. Nothing in this section permits reimbursement for any costs incurred in providing transportation for student attendance at extracurricular activities or events.

SECTION 26. AMENDMENT. Section 37 of chapter 667 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 37. CONTINGENT PAYMENTS - DISTRIBUTION. If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in Senate Bill No. 2013 remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2003, and ending June 30, 2005, the superintendent of public instruction shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$119,190, or so much of that amount as may be necessary, for the purpose of reimbursing eligible school districts that received reduced amounts of state aid. For the purposes of this subsection, an eligible school district is one that received a reduction in state aid during the second year of the 2003-05 biennium because the district's general fund levy fell below one hundred forty mills as the result of a reorganization or the dissolution of a contiguous district. The following affected districts listed are entitled to receive reimbursements:

Velva 1	\$24,355
TGU 60	93,514
Lewis and Clark	1,321

2. The superintendent of public instruction shall return the next \$759,000 to the state general fund.
3. The superintendent of public instruction shall use the ~~first~~ next \$250,000, or so much of that amount as ~~is~~ may be necessary, for the purpose of providing reimbursements to the chief administrators of joint powers agreements pursuant to section 19 of this Act.

- ~~2-~~ 4. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as ~~is~~ may be necessary, for the purpose of providing reorganization bonuses, pursuant to section 15.1-12-11.1, to school districts having reorganizations effective after July 1, 2003, and before July 1, 2005. If insufficient moneys exist to fully meet the requirements of this subsection, the superintendent of public instruction shall prorate the payments according to that percentage of the amount available to which a school district is entitled.
- ~~3-~~ 5. The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis, according to the average daily membership of each school district during the 2004-05 school year.

SECTION 27. CONTINGENCY - RETURN OF MONEYS TO THE GENERAL FUND. If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2005, and ending June 30, 2007, and if section 26 of this Act does not become effective before July 1, 2005, the superintendent of public instruction shall return the first \$759,000 to the state general fund.

SECTION 28. CONTINGENCY. If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2005, and ending June 30, 2007, and after the superintendent of public instruction has fulfilled any directives contained in section 27 of this Act, the superintendent shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$450,000, or so much of that amount as may be necessary, to provide additional payments to school districts serving English language learners in accordance with section 15.1-27-12.
2. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in eligible educational associations in accordance with section 32 of this Act.
3. The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

SECTION 29. CONTINGENCY PAYMENTS - TEACHER COMPENSATION - ADDITIONAL PER STUDENT PAYMENTS. If any moneys appropriated by the legislative assembly to the grants - teacher compensation line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after completion of all statutory obligations, the superintendent of public instruction shall use the remaining moneys to provide additional per student payments on a prorated

basis, according to the latest available average daily membership of each school district.

SECTION 30. TEACHER COMPENSATION - USE OF NEW MONEYS.

1. During the 2005-07 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new moneys received for per student payments under section 15.1-27-04 and tuition apportionment payments under section 15.1-28-03 for the purpose of increasing the compensation paid to teachers and for the purpose of providing compensation to teachers who begin employment with the district on or after July 1, 2005.
2. For purposes of this section, "new moneys" means any increase in the amount received by a district for per student payments under section 15.1-27-04 and tuition apportionment payments under section 15.1-28-03 between the 2003-05 biennium and the 2005-07 biennium.
3. For purposes of this section, school districts providing educational services under a cooperative agreement approved by the superintendent of public instruction are treated as a single district.
4.
 - a. The provisions of this section do not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of its members that complying with the provisions of subsection 1 would place the school district in the position of having insufficient fiscal resources to meet its other obligations.
 - b. Within ten days of the vote required by subdivision a, the board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.
 - c. The superintendent of public instruction shall report all notices received under this subsection to an interim committee designated by the legislative council.

SECTION 31. REPORT TO LEGISLATIVE COUNCIL - EDUCATIONAL ASSOCIATIONS GOVERNED BY JOINT POWERS AGREEMENTS. At the conclusion of each school year during the 2005-07 biennium, the superintendent of public instruction shall compile a report covering the operations of each educational association governed by a joint powers agreement and verified by the superintendent of public instruction as meeting the requirements of section 15.1-07-28. The report must include the administrative functions and student services in which members of each educational association participated and the direct and indirect benefits of such participation. The report must specifically address whether school district participation resulted in expanded course offerings, improved state and national test results, administrative consolidations, instructional sharing, increased or improved professional development opportunities, and cost-savings to each school district. The superintendent of public instruction shall present the reports to an interim committee designated by the legislative council.

SECTION 32. APPROPRIATION - ELIGIBLE EDUCATIONAL ASSOCIATIONS.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing payments to school districts that are members of eligible educational associations, for the biennium beginning July 1, 2005, and ending June 30, 2007.
2.
 - a. During June 2006 the superintendent of public instruction shall distribute seventy-five percent of the money appropriated under subsection 1 to eligible school districts on a per student basis. The total amount to which a school district is entitled under this subdivision may not exceed the amount expended by the school district during the 2005-06 school year to participate in an eligible educational association.
 - b. During June 2007 the superintendent of public instruction shall distribute the remaining money appropriated under subsection 1 to eligible school districts on a per student basis. The total amount to which a school district is entitled under this subdivision may not exceed the amount expended by the school district during the 2006-07 school year to participate in an eligible educational association.
3. For purposes of this section, an "eligible educational association" is one that is governed by a joint powers agreement that the superintendent of public instruction has verified as meeting the requirements of section 15.1-07-28.

SECTION 33. APPROPRIATION - REORGANIZATION BONUSES - CONTINGENCY. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$759,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing a reorganization bonus to any school district having a reorganization effective on July 1, 2005, pursuant to section 15.1-12-11.1, for the biennium beginning July 1, 2005, and ending June 30, 2007. If any moneys remain after the superintendent of public instruction completes the payment of bonuses for any reorganization effective on July 1, 2005, the superintendent shall use the remaining moneys to provide additional per student payments on a prorated basis, according to the latest available average daily membership of each school district.

SECTION 34. APPROPRIATION - TRANSPORTATION EFFICIENCY TRAINING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$30,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of contracting to provide transportation efficiency training to school district personnel, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 35. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$700,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing additional per student payments, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 36. REPEAL. Section 15.1-09-42 of the North Dakota Century Code is repealed.

SECTION 37. REPEAL. Section 15.1-12-11.1 of the North Dakota Century Code is repealed.

SECTION 38. REPEAL. Section 15.1-12-11.2 of the North Dakota Century Code is repealed.

SECTION 39. EFFECTIVE DATE. Sections 1, 17, and 36 of this Act become effective on July 1, 2006, and section 38 of this Act becomes effective on December 31, 2005.

Approved May 4, 2005

Filed May 4, 2005

CHAPTER 168

HOUSE BILL NO. 1311

(Representatives Nelson, Charging, Mueller)
(Senators Erbele, Taylor)

EDUCATION CONTINGENT PAYMENTS

AN ACT to amend and reenact section 37 of chapter 667 of the 2003 Session Laws, relating to contingent payments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37 of chapter 667 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 37. CONTINGENT PAYMENTS - DISTRIBUTION. If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in Senate Bill No. 2013 remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2003, and ending June 30, 2005, the superintendent of public instruction shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$119,190, or so much of that amount as is necessary, for the purpose of reimbursing eligible school districts that received reduced amounts of state aid. For the purposes of this subsection, an eligible school district is one that received a reduction in state aid during the second year of the 2003-05 biennium because the district's general fund levy fell below one hundred forty mills as the result of a reorganization or the dissolution of a contiguous district. The following affected districts listed are entitled to receive reimbursements:

<u>Velva 1</u>	<u>\$24,355</u>
<u>TGU 60</u>	<u>93,514</u>
<u>Lewis and Clark</u>	<u>1,321</u>

2. The superintendent of public instruction shall use the ~~first~~ next \$250,000, or so much of that amount as is necessary, for the purpose of providing reimbursements to the chief administrators of joint powers agreements pursuant to section 19 of this Act.
- ~~2.~~ 3. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as is necessary, for the purpose of providing reorganization bonuses, pursuant to section 15.1-12-11.1, to school districts having reorganizations effective after July 1, 2003, and before July 1, 2005. If insufficient moneys exist to fully meet the requirements of this subsection, the superintendent of public instruction shall prorate the payments

according to that percentage of the amount available to which a school district is entitled.

- ~~3.~~ 4. The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis, according to the average daily membership of each school district during the 2004-05 school year.

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

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 169

HOUSE BILL NO. 1032

(Legislative Council)
(Education Committee)

HIGH SCHOOL SUPPLEMENTAL PAYMENTS

AN ACT to amend and reenact subsection 1 of section 15.1-27-11 of the North Dakota Century Code, relating to the formula for calculating supplemental payments to high school districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

1. 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 sum of:
 - a. The district's latest available net assessed and equalized taxable valuation of property; plus
 - b. All tuition payments and county ~~and unrestricted federal~~ revenue received by the district, divided by the total of the district's general fund levy, high school transportation levy, and high school tuition levy.

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

Approved March 15, 2005
Filed March 16, 2005

¹¹¹ Section 15.1-27-11 was also amended by section 15 of House Bill No. 1154, chapter 167.

CHAPTER 170**HOUSE BILL NO. 1077**

(Agriculture Committee)

(At the request of the State Treasurer)

TAYLOR GRAZING ACT FUNDS DISTRIBUTION

AN ACT to amend and reenact section 15.1-27-24 of the North Dakota Century Code, relating to distribution of Taylor Grazing Act funds to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-24 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-24. Taylor Grazing Act funds - Disposition. The state treasurer shall apportion payments from the federal government to this state under the provisions of 43 United States Code 315i (the Taylor Grazing Act) among the counties in the state in the proportion that the number of acres [hectares] of Taylor Grazing Act land in each county bears to the total amount of Taylor Grazing Act land in the state. The state treasurer shall ~~make the distributions~~ calculate each county's apportioned payment and provide the payment to the county treasurer of each county receiving payments. Each county treasurer receiving payments shall distribute the funds to school districts in each that county on the basis of average daily membership of all students residing within the county.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 171

SENATE BILL NO. 2262

(Senators Bowman, Wardner)
(Representatives N. Johnson, Rennerfeldt)

COUNTY MINERAL ROYALTY EXPENDITURES

AN ACT to amend and reenact subsection 4 of section 15.1-27-25 of the North Dakota Century Code, relating to expenditure of federal mineral royalties by counties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 15.1-27-25 of the North Dakota Century Code is amended and reenacted as follows:

4. The counties may use any money received under this section only for the planning, construction, and maintenance of public facilities and the provision of public services. As used in this section, public facilities include any facility used primarily for public use as determined by the board of county commissioners whether located on public or private property.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 172**SENATE BILL NO. 2084**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

NONOPERATING SCHOOL DISTRICTS REPEAL

AN ACT to repeal section 15.1-27-33 of the North Dakota Century Code, relating to nonoperating school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15.1-27-33 of the North Dakota Century Code is repealed.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 173

SENATE BILL NO. 2109

(Education Committee)

(At the request of the Superintendent of Public Instruction and the Board of University and School Lands)

STATE TUITION FUND DEPOSITS

AN ACT to amend and reenact section 15.1-28-01 of the North Dakota Century Code, relating to deposits paid into the state tuition fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-28-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-28-01. State tuition fund - Source. The net proceeds of fines for the violation of state laws; ~~payments for school land leases; and interest and income distributions received~~ from the common schools trust fund must be paid into the state treasury and constitute the state tuition fund.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 174**SENATE BILL NO. 2110**

(Political Subdivisions Committee)

(At the request of the Board of University and School Lands)

SCHOOL LAND LEASE PAYMENT COLLECTION

AN ACT to amend and reenact section 15.1-28-02 of the North Dakota Century Code, relating to removal of the duty of county treasurers to collect payments for the leasing of school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-28-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-28-02. Reports of county treasurer. The county treasurer shall collect the net proceeds of all fines for violation of state laws ~~and all payments for school land leases within the county~~ and shall forward the amounts collected, together with a detailed statement of the moneys collected, to the state treasurer on or before the fifteenth of each month.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 175

HOUSE BILL NO. 1194

(Representatives Drovdal, Brandenburg, Kempenich)
(Senator Bowman)

STUDENT CROSS-BORDER ATTENDANCE

AN ACT to create and enact a new section to chapter 15.1-29 of the North Dakota Century Code, relating to contract terms for the cross-border attendance of elementary and high school students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-29 of the North Dakota Century Code is created and enacted as follows:

Cross-border attendance - Contract with South Dakota.

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
 - a. An application procedure;
 - b. Causes for denial of an application; and
 - c. The manner and notification of acceptance.
3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border

attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.

5. The superintendent of public instruction shall annually reconcile the number of students from each school district in this state who participate in cross-border attendance under this section with the number of students from school districts in South Dakota who participate in cross-border attendance under this section. The superintendent of public instruction shall withhold from each school district's state aid an amount equal to the cost incurred by the state on the part of the school district in permitting the cross-border attendance of students under this section.
6. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.
7. Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
8. Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

Approved March 22, 2005
Filed March 23, 2005

CHAPTER 176

SENATE BILL NO. 2033

(Legislative Council)
(Education Committee)

STUDENT RESIDENCY DETERMINATIONS AND PLACEMENT

AN ACT to create and enact a new section to chapter 15.1-29 of the North Dakota Century Code, relating to the enrollment and provision of services to elementary and high school students placed by out-of-state agencies or entities; and to amend and reenact section 15.1-29-14 of the North Dakota Century Code, relating to elementary and high school student residency determinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-14. Student placement for noneducational purposes - Residency determination - Payment of tuition.

1. a. ~~For~~ Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
 - a. (1) At the time that a state court, tribal court, juvenile supervisor, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
 - b. (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
 - c. (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
 - d. (4) At the time the student is placed voluntarily admitted to, by a parent or legal guardian, in a state-operated institution or to in a state-licensed child care home or facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth

following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

2. The student's school district of residence is obligated to pay:
 - a. All charges for tuition upon claim of the admitting district; and
 - b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. ~~a. If, after a student placement is made as provided for under subsection 1, the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of residence for purposes of paying tuition and tutoring charges under subsection 2.~~
 - ~~b. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools:~~
 - ~~(1) If if, on the September fifteenth after a student placement is made as provided for under subsection 1, the:~~
 - ~~a. The student's custodial parent or legal guardian establishes residency outside this state; or~~
 - ~~(2) If a~~
 - ~~b. A court orders a termination of parental rights with respect to the student's parents;~~
 - ~~c. The student no longer has a custodial parent; or~~
 - ~~d. The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.~~
4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee

established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.

5. If the student's district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition payments are due and unpaid, the superintendent shall withhold an amount equal to the unpaid tuition from state aid otherwise payable to the student's school district of residence until the tuition due has been fully paid.
6. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for special education in the case of a student with disabilities or from state aid payments to schools in all other cases.
7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. If the student's custodial parent establishes residency outside this state, or if a court orders a termination of parental rights with respect to the student's parents, the state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools. The obligations of the student's school district of residence as provided in subsection 2 and the obligations of the state as provided in subsection 3 are applicable to all students described in this subsection.
8.
 - a. The placing agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student, by registered mail, to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
 - (1) Within five working days after a placement is made under court order;
 - (2) Within five working days after an emergency placement is made; or
 - (3) At least ten working days prior to any other placement.
 - b. If, however, the student's parent or legal guardian voluntarily places the student in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1, and if the placement is privately funded, the administrator of the facility or program in

which the student is placed shall determine the student's school district of residence and provide the notification required by this section.

- c. The ~~written~~ notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.
 - ~~e.~~ d. The placing agency shall afford the student's school district of residence reasonable opportunity to participate in permanency planning for the student.
9. Notwithstanding 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.
10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

SECTION 2. A new section to chapter 15.1-29 of the North Dakota Century Code is created and enacted as follows:

Placement of student by out-of-state agency or entity - Provision of services - Contract - Responsibility for tuition and charges. A school district in this state may not enroll a student who is placed in the district for purposes other than education by an out-of-state agency or entity and whose school district of residence is located in another state, unless:

- 1. This state and the student's state or school district of residence have entered a contract that addresses responsibility for the payment of all tuition and tutoring charges; or
- 2. Other contractual arrangements exist governing responsibility for the payment of all tuition and tutoring charges.

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 177

HOUSE BILL NO. 1237

(Representatives Hawken, Delmore, N. Johnson)
(Senators Erbele, Flakoll)

SPECIAL EDUCATION PER STUDENT PAYMENTS

AN ACT to amend and reenact section 15.1-32-14 of the North Dakota Century Code, relating to the forwarding of special education per student payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-32-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-14. Special education per student payments.

1. A If a student with disabilities who receives special education services is deemed to be enrolled in the student's, the superintendent of public instruction shall forward any per student payments, payable on behalf of that student, directly to the school district of residence for purposes of calculating per student payments in which the student receives such services.
2. An If a student with disabilities attends a special education summer program required by the student's individualized education program or services plan and approved by the superintendent of public instruction, the superintendent of public instruction shall forward any additional prorated per student payment may be made if a student with disabilities attends a special education summer program approved by the superintendent of public instruction, provided the student's individualized education program or services plan requires that the student attend a special education summer program payments, payable on behalf of the student, directly to the school district in which the student receives such services.
3. If a student who is enrolled in a nonpublic school receives special education services in a public school, the superintendent of public instruction shall forward a proportionate per student payment to the school district in which the student receives the services.
4. a. If in the opinion of an individualized education program team or a services plan team a student is unable to attend a public school in the special education unit to which the student's school district of residence belongs, the student's school district of residence shall contract with another public school that:
 - (1) Does not belong to the same special education unit;
 - (2) Is located in this state;
 - (3) Is willing to admit the student; and

- (4) Is able to provide appropriate services to the student.
- b. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.
 - c. The contract must provide that the student's school district of residence agrees to pay to the district in which the ~~admitting school is located~~ student receives services, as part of the cost of educating the student for the school year, an amount equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs. The amount paid may not exceed the actual per student cost incurred by the admitting school, less any per student payment received on behalf of the student under this section.
 - d. The liability of the student's school district of residence must be reduced proportionately if the student attends the admitting school for less than an entire school year.
 - e. Upon being notified by the ~~admitting~~ district in which the student receives services that tuition payments provided for by this section are due and unpaid, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled until the tuition due has been paid.
 - f. The superintendent of public instruction shall provide to the school district in which the student receives services, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 178

SENATE BILL NO. 2260

(Senators Seymour, Erbele, Flakoll, Holmberg)
(Representatives Herbel, Horter)

EARLY CHILDHOOD EDUCATION

AN ACT to create and enact a new chapter to title 15.1 of the North Dakota Century Code, relating to early childhood education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 15.1 of the North Dakota Century Code is created and enacted as follows:

Early childhood education program - Approval. Any person or school district operating an early childhood education program may request approval of the program from the superintendent of public instruction. The superintendent shall approve an early childhood education program if the program:

1. Is taught by individuals who are licensed to teach in early childhood education by the education standards and practices board;
2. Follows a developmentally appropriate curriculum; and
3. Is in compliance with all municipal and state health, fire, and safety requirements.

Per student funding will not be provided to individuals or school districts offering a prekindergarten program.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 179

HOUSE BILL NO. 1374

(Representatives Hawken, Delmore, R. Kelsch, L. Meier)
(Senators Flakoll, Holmberg)

ENGLISH LANGUAGE LEARNER PROGRAMS

AN ACT to create and enact a new chapter to title 15.1 of the North Dakota Century Code, relating to school district programs for English language learners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 15.1 of the North Dakota Century Code is created and enacted as follows:

English language learners - Program of instruction. Each school district shall provide a program of instruction for students who are English language learners. The program may be provided by a school district or in conjunction with one or more districts.

Program establishment. The superintendent of public instruction shall:

1. Appoint a state advisory committee to assist with the establishment and administration of English language learner programs and the state English language proficiency assessment;
2. Establish standards for English language learner programs;
3. Ensure that the English language learner programs use effective research-based methods to teach the students;
4. Assist school districts with the development and administration of English language learner programs and services;
5. Employ a program administrator and other necessary personnel; and
6. Coordinate federal, state, and local funding to maximize the services available to students.

English language learner services - Individualized plans. If a school district determines through assessment that a student requires English language learner services, the school district shall convene a team to review the student's language and educational needs. The team may develop an individualized language plan and recommend specialized language instruction and related services.

Approved April 12, 2005

Filed April 13, 2005

ELECTIONS

CHAPTER 180

HOUSE BILL NO. 1222

(Representatives Carlson, Devlin, Thoreson)
(Senators Flakoll, O'Connell, Wardner)

INITIATED MEASURE FISCAL IMPACT

AN ACT providing for determining the estimated fiscal impact of an initiated measure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Estimated fiscal impact of an initiated measure. At least ninety days before a statewide election at which an initiated measure will be voted upon, the legislative council shall coordinate the determination of the estimated fiscal impact of the initiated measure. Upon notification from the secretary of state that signed petitions have been submitted for placement of an initiated measure on the ballot, the legislative council shall hold hearings, receive public testimony, and gather information on the estimated fiscal impact of the measure. Each agency, institution, or department shall provide information requested in the format and timeframe prescribed by the legislative council or its designated committee for identifying the estimated fiscal impact of an initiated measure. At least thirty days prior to the public vote on the measure, the legislative council shall submit a statement of the estimated fiscal impact of the measure to the secretary of state. Upon receipt, the secretary of state shall include a notice within the analysis required by section 16.1-01-07 specifying where copies of the statement of the estimated fiscal impact can be obtained. Within thirty days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the legislative council under this section shall submit a report to the legislative council on the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated measure and a comparison to the estimates provided to the legislative council under this section and the legislative council shall issue a report of the actual fiscal impact of the initiated measure.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 181

HOUSE BILL NO. 1452

(Representatives Horter, Grande, Klein)
(Senator Klein)

CENTRAL VOTER FILE

AN ACT to amend and reenact section 16.1-02-02, subsection 1 of section 16.1-02-03, and sections 16.1-02-07, 16.1-02-10, 16.1-02-12, and 16.1-02-13 of the North Dakota Century Code, relating to the central voter file; and to repeal section 16.1-02-08 of the North Dakota Century Code, relating to the central voter file.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-02. Costs of creating and maintaining a central voter file. The creation of the central voter file and its maintenance through June 30, ~~2009~~ 2011, must be paid for with funds from the state's election fund, provided the election fund contains adequate funding to create and maintain the central voter file. The creation of the central voter file and its maintenance through June 30, ~~2009~~ 2011, may not be paid for from funds in the secretary of state's budget, the state's general fund, or from county funds. Beginning July 1, ~~2009~~ 2011, the offices required to perform the functions and duties of this chapter shall bear the costs incurred in performing those duties and the secretary of state shall pay the costs of operating and maintaining the central voter file.

SECTION 2. AMENDMENT. Subsection 1 of section 16.1-02-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Not later than the primary election in ~~2006~~ 2008, the secretary of state shall establish the central voter file in cooperation with the department of transportation and county auditors.

SECTION 3. AMENDMENT. Section 16.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-07. Reporting individuals placed under guardianship and changes of names - Changes to records in the central voter file.

1. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has been placed under a guardianship and as a result has been deprived of the legal right to vote since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "ineligible" to each county auditor.

- 2- The state court administrator shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual eighteen years of age or older whose legal right to vote has been restored by the court since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
- 3- The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by divorce or any order or decree of the court since the last report. Within sixty days after receiving the report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

SECTION 4. AMENDMENT. Section 16.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-10. Posting voting history - Failure to vote - Individuals designated inactive. Within ninety days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the ~~2008~~ 2010 calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

SECTION 5. AMENDMENT. Section 16.1-02-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-12. Information contained and maintained in the central voter file. The central voter file must contain the following information for each individual included in the file:

1. The complete legal name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. A designation showing whether the individual's ability to vote in a precinct has been inactivated as a result of death, ~~incarceration, or because of a change in guardianship status,~~ or because the individual is no longer a resident of the precinct according to section 16.1-01-04.

6. ~~A designation showing whether the individual must be challenged according to section 16.1-05-06.~~
7. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
8. ~~7.~~ Beginning in 2008, four years of an individual's voting history, if applicable.
9. ~~8.~~ Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the central voter file.

SECTION 6. AMENDMENT. Section 16.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-13. Information contained in pollbooks generated from the central voter file. The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the ~~fifteenth~~ day before an election. With the exception of the unique identifier, which is an exempt record, the precinct pollbooks are open records under section 44-04-18. Between the ~~fifteenth~~ day before the election and the day of the election, no changes or updates to records of individuals contained in the central voter file or a pollbook generated from the central voter file may be made, other than changes related to the status of an individual voting early or an individual requesting and returning an absent voter's ballot. The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete legal name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. ~~A designation showing whether the individual must be challenged according to section 16.1-05-06.~~
6. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
7. ~~6.~~ Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

SECTION 7. REPEAL. Section 16.1-02-08 of the North Dakota Century Code is repealed.

CHAPTER 182

HOUSE BILL NO. 1431

(Representatives Herbel, Devlin)

(Senator Lyson)

ELECTION PRECINCTS, POLLS, AND OFFICERS

AN ACT to amend and reenact sections 16.1-04-03 and 16.1-05-01 and subdivision a of subsection 1 of section 16.1-05-02 of the North Dakota Century Code, relating to precincts, polling places, and election officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-04-03. Time limitations. The authority granted by this chapter must be exercised by the respective governing bodies no later than December thirty-first of the year immediately preceding an election cycle and no later than seventy days before an a special election. If legislative reapportionment occurs, the authority granted by this chapter must be exercised, as it relates to the establishment or reestablishment of voting precincts that may be required because of any change in legislative districts, within thirty-five days after the effective date of the reapportionment.

SECTION 2. AMENDMENT. Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-01. Election officers. At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:
 - a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
 - b. In all other precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
 - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse,

the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

Except in the case of special elections, all appointments required to be made under this section must be made at least twenty-one days preceding an election.

2. The election judges and poll clerks for each ~~precinct~~ polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In ~~voting precincts or districts~~ polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge. In ~~voting precincts or districts~~ polling places in which over three hundred votes are cast in any election, each district party chair may appoint additional poll clerks as determined by the county auditor. The district party 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~~ boundaries of the precincts within the polling place 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 polling place's legislative district~~ districts. If vacancies still remain, the county auditor may select election judges and clerks who reside outside of the legislative ~~district~~ districts 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 3. AMENDMENT. Subdivision a of subsection 1 of section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in subdivisions b and d, every member of the election board and each poll clerk must be a qualified elector of ~~the~~ a precinct within the polling place boundaries 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.

CHAPTER 183

HOUSE BILL NO. 1254

(Representatives Onstad, Keiser, Kerzman)
(Senators Fairfield, Warner)

IDENTIFICATION FOR VOTING PURPOSES

AN ACT to amend and reenact section 16.1-05-07 of the North Dakota Century Code, relating to approved forms of identification for voting purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-07. Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show ~~a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state,~~ which includes the individual's residential address and date of birth. The identification may include:
 - a. An official form of identification issued by the state;
 - b. An official form of identification issued by a tribal government;
 - c. A form of identification prescribed by the secretary of state; or
 - d. A combination of any of the forms of identification under subdivisions a through c.
2. If an individual offering to vote ~~fails~~ does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. ~~After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.~~
- 2-. If the individual's name is not contained in the pollbook generated from the central voter file, the individual may be challenged according to section 16.1-05-06 and the individual's name must be recorded in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.

3. If an individual offering to vote does not meet either of the options set forth in subsection 1 or 2, the election board shall challenge the individual's right to vote and the individual may not vote unless the individual executes a voter's affidavit, as provided in section 16.1-05-06.
4.
 - a. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual ~~that is required to be contained~~ included in the pollbook generated from the central voter file.
 - b. If the individual's name is contained in the pollbook generated from the central voter file, the poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
 - c. If the individual's name is not contained in the pollbook generated from the central voter file but the individual is determined eligible to vote, the poll clerks shall record the individual's name in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.
4. 5. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 184

HOUSE BILL NO. 1497

(Representatives Grande, Belter, DeKrey, Timm)
(Senators Christmann, Klein)

ELECTION PROCESS ADMINISTRATION

AN ACT to amend and reenact sections 15.1-09-11, 16.1-06-04, 16.1-06-05, 16.1-06-06, 16.1-06-07.1, 16.1-06-08, 16.1-06-09, 16.1-06-18, 16.1-11-22, 16.1-11-24, and 16.1-11-35, subsection 1 of section 16.1-12-02.2, and sections 16.1-13-20, 16.1-13-22, 16.1-13-23, 16.1-13-25, and 16.1-15-08 of the North Dakota Century Code, relating to election process administration; and to repeal section 16.1-13-26 of the North Dakota Century Code, relating to election process administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-11. School district elections - Preparation of ballots - ~~Stickers.~~

1. At least twenty days before the election, the business manager shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all individuals who have indicated their intent to be candidates by meeting the provisions of section 15.1-09-08. The business manager shall ~~determine by lot, in the presence of the candidates or their representatives, the arrangement of the candidates' names upon the ballot~~ notify the candidates as to the time and place of the drawing for position on the ballot.
2. The ballot must be nonpartisan in form and include:
 - a. The words "official ballot" at the top;
 - b. The name of the school district;
 - c. The date of the election;
 - d. The number of persons to be elected to each office; and
 - e. Below the list of candidates for each office, blank spaces in which names not printed on the ballot may be written.
3. ~~An individual who wishes to be a candidate for election, is qualified to hold office, and has failed to meet the filing requirements of section 15.1-09-08 may provide stickers to be attached to the official ballot by the electors. A sticker must have the name and address of the individual printed on it. The sticker may not be more than one-half inch [42.7 millimeters] in height.~~

SECTION 2. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title for use in precincts in which electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality and color of paper in an ink color suitable to make the ballot clearly legible and compatible with the electronic voting system requirements necessary to tabulate the votes.
3. 2. Be of sufficient length to contain the names of all candidates to be voted for at that election.
4. 3. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
5. 4. Have printed thereon "Place a cross mark (X) by the name of the person 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." "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
6. 5. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. 6. Provide a space enclosed in a square in which the voter may designate by a cross or other mark the voter's choice for each candidate opposite the name of that candidate, and the space must precede or follow the candidate's name on the same line in a uniform manner. Immediately preceding and on the same line as the name of each candidate must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
8. 7. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: two text boxes in the bottom right-hand corner of the party ballot. The first text box is to contain the words "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted." The second text box is to contain the words "Official Ballot", the name of the county, the name or number of the precinct or the word "precinct" preceding a blank line upon which the judge or the inspector shall write the name or number of the precinct, the date of the election, and the word "initials" preceding a blank line where the judge or inspector shall initial the ballot.

All ballots, other than
those used to vote absentee,
must first be initialed by

Official Ballot
County
Precinct

appropriate election officials
in order to be counted

(Date of the Election)
Initials

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

~~In precincts in which electronic voting systems are used, the~~ The ballot must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot must ~~otherwise~~ be arranged in a manner and form approximating as far as possible the requirements of this section.

SECTION 3. AMENDMENT. Section 16.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections ~~in precincts in which electronic voting systems are not used~~ must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

~~In precincts in which electronic voting systems are used, the~~ The list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged on the ballot in a manner and form approximating as far as possible the requirements of this section.

SECTION 4. 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 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 and delivering~~ 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 16.1-14-18 and 16.1-14-19.

SECTION 5. AMENDMENT. Section 16.1-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-07.1. Arrangement of names on ballot - Presidential electors. In presidential election years the ballot provided for in section 16.1-06-05 must include the designation of the office of president and vice president as the first listing of the continuous listing of the designation of each office to be voted for. The names of presidential electors, presented in one certificate of nomination, must be arranged in a group enclosed in brackets under the designation of the office of president and vice president on the right side of the ballot column. To the ~~right~~ left and opposite the center of each group of electors' names must be printed in bold type the surname of the presidential candidate represented and in line with such surname must be placed a single ~~square~~ oval. A mark within such ~~square~~ oval by the voter must be designated as a vote for all the electors. The appropriate party designation must appear, in smaller type, under the surname of the presidential candidate represented.

SECTION 6. AMENDMENT. Section 16.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector. There must be a separate no-party ballot at the general election upon which must be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. In precincts in which electronic voting systems are used, The separate ballot may be on the same paper or electronic ballot, but the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

SECTION 7. AMENDMENT. Section 16.1-06-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-09. Constitutional amendments and initiated and referred measures - 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, 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 or 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 or 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 an oval before~~ each statement in which the voter ~~may is to indicate by a cross or other mark~~ how the voter desires to vote on the question by darkening the oval. 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.

SECTION 8. AMENDMENT. Section 16.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-18. Delivery of ballots - Official stamp delivered. At the ~~meeting~~ precinct election officials' training sessions provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available. The ballots must be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which the ballots are intended. ~~The county auditor shall deliver or cause to be delivered to the inspector, or if that is impracticable, to one of the election judges of the precinct, a stamp and inkpad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct; the name of the county; the date of the election; and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall initial the ballot. The stamp and inkpad are not required if that information is preprinted on the ballot. If the information is preprinted on the ballot, the name or number of the precinct may be replaced by the word "precinct" followed by a blank line where the judge or inspector shall write in the name or number of the precinct. The county auditor shall deliver or cause to be delivered a suitable seal for the purpose of wrapping and sealing the stamp and inkpad at the close of the voting but before the counting of the ballots if a stamp is required. The county auditor also shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.~~

SECTION 9. AMENDMENT. Section 16.1-11-22 of 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 ~~principals~~ principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot".
2. Each party or ~~principal~~ 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 ~~principal~~ principle which it represents.
4. In each column below the party or ~~principal~~ 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 party 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."~~ "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
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 all 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.~~ Immediately preceding and on the same line as the name of each aspirant must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
9. The political party or ~~principal~~ 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 ~~principal~~ 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 party ballot will be rejected.

SECTION 10. AMENDMENT. Section 16.1-11-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-24. No-party primary ballot - Contents. There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. ~~In precincts in which voting machines are used,~~ The separate ballot may be on the same paper or electronic ballot, but the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed on the ballot without party designation. Immediately under the name of each office must be

placed the language "Vote for no more than _____ name (or names)." The number inserted must be the number to be elected to the office at the next succeeding general election.

SECTION 11. AMENDMENT. Section 16.1-11-35 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-35. Nominations by stickers write-in. On both the party and the no-party ballot, a candidate may be nominated by having the candidate's name written on the ballot or by a printed sticker being placed in a blank line left for that purpose underneath the group of candidates in each official position. Not more than one name may be written or printed on any sticker. The provisions of this title do not prevent any elector from writing on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.

SECTION 12. AMENDMENT. Subsection 1 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. An election board or canvassing board may not count or be required to officially report 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.
 - d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the clerk of district court no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.

- e. Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.
- f. Write-in votes that do not need to be individually canvassed based on the requirements of this subsection must be listed on the county canvass report as "scattered write-ins".

SECTION 13. AMENDMENT. Section 16.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-20. Examination of ballot box before opening of polls - Regulations for ballot box while polls are open. Before declaring the polls open, the inspector and the election judges shall inspect the ballot box to assure that it is empty. The ballot box must then be locked. While the polls are open, the ballot box must remain locked except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box to make room for additional ballots.

SECTION 14. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-22. Delivering ballot to elector - Stamping Initialing. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. ~~The paper ballot is considered stamped if it is either stamped with a stamp and an inkpad or has the stamped information preprinted on the paper ballot, as provided in section 16.1-06-18.~~
2. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.
3. 2. Before delivering any paper ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall initial the ballot. Failure to stamp and initial a paper ballot in the proper place does not invalidate the ballot, but a complete failure to stamp and initial a paper ballot does invalidate the ballot.

SECTION 15. AMENDMENT. Section 16.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-23. Preparation of ballot by elector - Folding - Depositing - Second-chance voting. Upon receipt of a ballot within the provided secrecy sleeve, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare the elector's ballot by placing a crossmark (X) or other mark which clearly shows the intention of the elector within

~~the square darkening the oval~~ opposite the name of each person for whom the elector wishes to vote. In the case of a ballot containing a constitutional amendment, an initiated or referred measure, or any other question to be submitted to a vote of the people, the elector shall ~~place the crossmark (X) or other mark within the square~~ darken the oval opposite the word or words expressing the elector's wish. After preparing the ballot, the elector shall ~~fold it so the face of~~ place the ballot back in the provided secrecy sleeve so it is concealed and so the endorsement of the inspector or election judge stamped thereon may be seen. The elector then shall ~~hand the ballot to the judge, who, without opening the same or permitting it to be opened or examined except to ascertain whether it is a single ballot and whether it has been stamped and initialed,~~ shall deposit it the ballot in the optical scanning device and wait to determine if the ballot is deposited into the ballot box or if the optical scanning device has indicated a possibility for a second-chance voting condition. In precincts which use an electronic counting device, the ballot need not be folded before handing the ballot to the judge. If a second-chance voting condition is indicated, a voter may spoil and receive up to two additional ballots. The voter's third ballot must be cast as is even if errors exist causing certain votes not to be counted.

SECTION 16. AMENDMENT. Section 16.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing ~~or pasting~~ on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted ~~the same as if printed on the ballot and marked by the elector according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.~~

¹¹² **SECTION 17. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to clerk of the district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots of each kind cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the clerk of the district court. At the meeting of the county canvassing board, the clerk of the district court shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2. Ballots

¹¹² Section 16.1-15-08 was also amended by section 9 of House Bill No. 1417, chapter 191.

used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

SECTION 18. REPEAL. Section 16.1-13-26 of the North Dakota Century Code is repealed.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 185

HOUSE BILL NO. 1433

(Representative Boehning)

(Senator Krebsbach)

ELECTION MECHANICS

AN ACT to amend and reenact sections 15.1-09-09, 16.1-01-09.1, 16.1-06-15, 16.1-06-16, 16.1-06-19, 16.1-06-20, 16.1-06-23, 16.1-11-01, 16.1-11-27, 16.1-11-30, 16.1-11-31, 16.1-11-32, 16.1-11-33, 16.1-13-06, 40-21-02, 44-02-05, and 44-02-08 of the North Dakota Century Code, relating to election mechanics; and to repeal sections 16.1-11-23, 16.1-11-34, and 40-21-12 of the North Dakota Century Code, relating to election mechanics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-09. School district elections - Notice. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline must be published in the official newspaper of the city or county. At least fourteen days before the date of an annual or special school district election, the school board shall publish a notice in the official newspaper of the district stating the time and place of the election and the purpose of the vote. If a school board agrees to hold the election in conjunction with a primary election, the deadline for giving notice of the school district election and the purpose of the vote must meet the publishing requirements of the county. The governing body of the city of Fargo shall publish notice with respect to Fargo school district elections.

SECTION 2. AMENDMENT. Section 16.1-01-09.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-09.1. Recall petitions - Signature - Form - Circulation.

- A request of the secretary of state for approval of a petition to recall an elected official or appointed official of a vacated elected office 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 recall; the printed name, signature, and address of the committee member; and notarization of the signature.
- A person may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the person is a qualified elector. A person may not sign a petition more than once, and each signer shall add the signer's complete residential, rural route, or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition. A petition must be in substantially the following form:

RECALL PETITION

We, the undersigned, being qualified electors request that _____ (name of the person being recalled) the _____ (office of person being recalled) be recalled for the reason or reasons of _____.

RECALL SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota and the political subdivision who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

	Name	Complete Residential, Rural Route, or General Delivery Address
1.	_____ (Chairman)	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota for thirty days, and you are a United States citizen. All signers must add their complete residential, rural route, or general delivery address and date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Complete Residential, Rural Route, or General Delivery Address	City, State
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

- ~~6.~~ 7. The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the filing officer to be invalid may not be counted and all violations of law discovered by the filing officer must be reported to the state's attorney for possible prosecution.

SECTION 3. AMENDMENT. Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-15. Mandatory testing of electronic voting systems before election and before and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.

SECTION 4. AMENDMENT. Section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days before the election; ~~and the ballots may be inspected by any person~~ available for public inspection at the auditor's office.

2. Deliver to the inspector in each precinct ~~at least three days but not more~~ or cause to be delivered in a secure manner to the polling location ~~no later than fifteen days the day before the election~~ the number of ballots, pollbooks, ~~blanks for election returns with the proper captions if ballots are to be hand-counted~~ ballot boxes, voting equipment, forms of oaths, and ~~certificates, tally sheets necessary to carry out this title, and~~ other election supplies as the county auditor determines necessary.

SECTION 5. AMENDMENT. Section 16.1-06-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places. Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and voting ballots and a copy of section 16.1-01-12, any federal laws regarding prohibitions on acts of fraud and misrepresentations, and general information on voting rights under applicable federal and state laws, including instructions on how to contact the appropriate officials if these rights are alleged to have been violated. The county auditor shall furnish ten such cards to the election inspector in each election precinct who, before the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least ~~three~~ one of the cards in ~~and about~~ the polling place. Three of the official ballots without the ~~official stamp~~ initials of an election board member thereon must be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. ~~Not less than three~~ One of the newspaper publications or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each precinct with four copies of a map showing the election precinct's boundaries and information regarding the date of the election and the hours during which polling places will be open. The inspector shall, before the opening of the polls, post the maps and information regarding the date of the election and the hours during which polling places will be open at the entry to and in other conspicuous places around the polling place.

SECTION 6. AMENDMENT. Section 16.1-06-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-20. Election inspector and judges to display material and provide instruction. In addition to other duties provided by law, the election inspector in ~~precincts using an electronic voting system~~ shall post in a conspicuous manner at the voting place the ~~four~~ two facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth.

SECTION 7. AMENDMENT. Section 16.1-06-23 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-23. Secretary of state to send blanks instructions and envelopes to county auditor to make returns. The secretary of state shall send ~~blank forms~~ instructions for generating reports and envelopes, for all returns of votes required to be made to the secretary of state's office, to each county auditor with such printed directions on the envelope as the secretary of state deems necessary

for the guidance of election officers in making returns according to law. The expense of furnishing such ~~blank~~ instructions and envelopes must be paid by the state.

SECTION 8. AMENDMENT. Section 16.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-01. Primary election - When held - Nomination of candidates - Nomination for special elections. On the second Tuesday in June of every general election year, a primary election must be held for the nomination of candidates for the following offices in the years of their regular election: United States senators, member of the United States house of representatives, county officers, state officers, judges of the supreme court and district court, members of the legislative assembly, elected state officials, judges of the supreme court and district court, county officers, and county commissioners, and United States senators. In special elections the nominations for the officers enumerated in this section must be made as provided in this title.

SECTION 9. AMENDMENT. Section 16.1-11-27 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-27. Arrangement of names on ballots. 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. In the event that this determination is no longer possible due to changes in precinct boundaries, the precincts are to be ordered according to the precincts with the greatest voting age population to the least. This information is to be provided by the North Dakota state data center or based on the best available data as determined by the county auditor. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for must be alternated in the following manner:

1. The ballot must first be arranged with all the names for each office on the ballot in an order determined by lot by the county auditor and prepared by the county auditor for all state, district, and county offices.
2. The position of names that require alternating under the provisions of this section must be alternated so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second must be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process must be continued from one precinct to another and for as many names as are involved by an algorithm approved by the secretary of state designed to ensure to the extent possible that each name on the ballot for an office is listed in each position order on an equal number of precinct ballots spread across the county. There must be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:
 - a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.
 - b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.

- 3- 2. The precincts must be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election. Although the names are to be alternated within the offices on the ballot, the name order for an office is to be the same for all ballots within a precinct.

SECTION 10. 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. Any party 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; any party that had printed on the ballot at the last preceding nonpresidential election a candidate for attorney general or secretary of state, and the candidate received at least five percent of the total vote cast for the office the candidate was seeking at the election; or any party that has organized according to all the requirements of chapter 16.1-03 must be provided with a separate column on primary election ballots.

Any other political organization is entitled to endorse candidates or have candidates petition to be included on the primary ballot in a consolidated column or on a special election ballot, 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 before a primary or special election, naming the political organization, stating the platform principles of the party, and requesting the names of its candidates to be included on the state's primary ballot in a consolidated column. If the 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 or special election. Candidates of that party are entitled to the same rights and privileges as those of other parties. Petitions circulated according to this section must be filed with the secretary of state in accordance with section 1-01-50.

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.

SECTION 11. AMENDMENT. Section 16.1-11-31 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-31. Tally books or sheets provided for election precincts - Form and contents Precinct election reports. Two tally books or two sets of tally sheets must be provided for each voting precinct not using electronic ballot counters. The books or sheets must contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot must be provided for each voting precinct. The books or sheets must be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names

of the candidates must be placed on the tally books or sheets in the order in which they appear on the official sample ballot and, as appropriate, must have the proper party or no-party designation at the head thereof. Optical scan ballot tabulation machines must print reports detailing the election results from the precinct after the close of the polls.

SECTION 12. AMENDMENT. Section 16.1-11-32 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-32. Poll lists kept by clerks of elections. The clerks of primary elections shall keep two lists of the names of all persons voting at each primary election. Each clerk shall return one list ~~and one tally sheet~~, which must be a part of the records and filed with other election returns. Only two complete lists of voters may be kept whether or not a special election is held simultaneously with the primary election.

SECTION 13. AMENDMENT. Section 16.1-11-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-33. Judges of election to ~~make statement~~ run report of primary election - Contents. The judges of a primary election in each precinct shall ~~make run~~ a separate ~~statement, on blanks provided for that purpose,~~ report for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for what office. The ~~statement report~~ must be subscribed by the election judges and must be filed with the returns in the office of the county auditor.

SECTION 14. AMENDMENT. Section 16.1-13-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-06. Defeated primary candidate ineligible to have name printed on general ballot - Exception. Except to fill a vacancy occurring on the ballot, an individual who was a candidate for nomination by any party or a candidate for a no party office at any primary election in any year and who was defeated for the nomination may not have that individual's name printed upon the official ballot at the ensuing general election for the same office.

SECTION 15. AMENDMENT. Section 40-21-02 of 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.

1. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline must be published in the official newspaper of the city as provided by section 40-01-09.
2. Ten days' notice of the time and place of the election and of the offices to be filled at 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.
3. 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.

4. For city elections that are not held under an agreement with any county, the governing body of the city shall appoint one inspector 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. In voting precincts in which over three hundred votes are cast in any previous election, two election clerks may be appointed by the governing body. 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.
5. 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. Each city governing body that enters into an agreement with the county must notify the county auditor, in writing, at least fifty-five days before the election of the offices to be filled at the election and any measures to appear on the ballot.

SECTION 16. AMENDMENT. Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

44-02-05. Vacancy in board of county commissioners - How filled. When a vacancy occurs in the board of county commissioners, the remaining members of the board, with the district judge selected by the remaining county commissioners, immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer or, if the county does not have an elected treasurer, another elective county officer must be called in and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election that occurs at least sixty days after the vacancy and the successor has qualified.

SECTION 17. AMENDMENT. Section 44-02-08 of the North Dakota Century Code is amended and reenacted as follows:

44-02-08. Appointment to be made in writing - Term. Any appointment to fill a vacancy under ~~the provisions of~~ this chapter must be made in writing, and, except as otherwise expressly provided by law, continues in force until the first general election ~~thereafter~~ that occurs at least sixty days after the vacancy, when the vacancy will be filled by election, and thereafter until the appointee's successor by election is qualified.

SECTION 18. REPEAL. Sections 16.1-11-23, 16.1-11-34, and 40-21-12 of the North Dakota Century Code are repealed.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 186

SENATE BILL NO. 2336

(Senator Krebsbach)
(Representative Haas)

ABSENTEE VOTING

AN ACT to amend and reenact sections 16.1-07-01, 16.1-07-05, 16.1-07-06, 16.1-07-08, 16.1-07-08.1, and 16.1-07-12 of the North Dakota Century Code, relating to absentee voting.

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 is in the armed forces of the United States, is in the merchant marine of the United States, or is a United States citizen living outside the United States who resided in this state immediately prior to the individual's departure from the United States, may vote an absent voter's ballot at 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 or~~ a citizen of the United States who is eighteen years of age or older ~~and~~ has never lived in the United States, and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:
 - a. Does not maintain a domicile;
 - b. Is not registered to vote in any other state, territory, or possession of the United States;
 - 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.

SECTION 2. AMENDMENT. Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-05. Time for applying for ballot - Applications and voting for uniformed citizens and for citizens living outside the United States - Emergency situations - Sufficient time for application and ballot return.

1. At any time in an election year, any qualified elector 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.
2. An applicant who is a qualified elector and on active duty as a member of the United States armed forces or the United States merchant marine may receive an absentee ballot by mail, facsimile, or electronic mail. In the event that returning the voted ballot by mail is not practicable, qualified electors meeting the stated criteria of this subsection may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. To return a voted ballot and other required documents by electronic mail, the eligible voter must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose prior to midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.
3. Spouses, children, or other dependents of active duty members of the United States armed forces or merchant marine who are qualified electors and stationed as a family outside the United States are granted the same absentee voting rights as the individual's spouse, parent, or guardian has under subsection 2.
4. An applicant who is a member of the United States armed forces or the United States merchant marine living outside the United States 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 any individual eligible to apply for and vote by facsimile under this section receive an absentee ballot by mail, facsimile, or electronic mail. If returning the voted ballot by mail is not practicable, a qualified elector may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. The elector must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of

state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose before midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.

5. 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.
6. A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

SECTION 3. AMENDMENT. Section 16.1-07-06 of 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 form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's current or most recent North Dakota residential 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 date of the request.
 - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.
 - h. The applicant's signature.
 - i. A space for the voter to include the voter's precinct or voting location, if known.

If the applicant is unable to sign the applicant's name, the applicant shall mark (X) on the application 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~~ the disinterested person's own name

following the printed name together with the notation "witness to the mark".

2. A The application for 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 serving on active duty as a member of the United States armed forces, merchant marine, or a family member who is a qualified elector and stationed outside the United States together with the individual's spouse, parent, or guardian must include the following additional information if the voter desires to vote by facsimile or electronic mail:
 - a. ~~The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine living outside the United States.~~ Facsimile telephone number; or
 - b. ~~The elector is a United States citizen living outside the United States~~ Electronic mail address.

~~If the qualified elector furnishes the county auditor with a current mailing address and the elector's residential address, the county auditor either shall mail to the qualified elector a ballot with a return envelope and instructions or send to the qualified elector the ballot and instructions by facsimile for voting for any statewide election in that calendar year.~~

3. The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail.

SECTION 4. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Challenging electors voting by absentee ballot - 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. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. 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~~ voter's affidavit in substantially the following form:

Precinct _____
Name _____
Residential Address _____
City _____ ND Zip Code _____
Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, 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) on the 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 the disinterested~~ person's own name following the printed name together with the notation "witness to the mark".

3. ~~The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.~~
4. Each person requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
- 5- 4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any person of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

SECTION 5. AMENDMENT. Section 16.1-07-08.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08.1. Procedures for voting with special write-in or federal write-in absentee ballot.

1. Notwithstanding any other provision of this chapter, a qualified absentee elector may apply to the county auditor for a special write-in absentee ballot. This ballot may be used to vote for presidential electors and members of the United States senate and of the United States house of representatives.
2. The application for a special write-in absentee ballot may be made on a form prescribed by the secretary of state. In order to qualify for a special write-in absentee ballot, the voter shall state on the application that the voter is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world.
3. Upon receipt of the application, the county auditor shall issue the special write-in absentee ballot, which must be in the form prescribed by the secretary of state. The ballot must permit the elector to vote by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.
4. If the voter is temporarily residing outside the United States or is a member of the United States armed forces, merchant marine, or a family member and a qualified elector, the voter may use the federal write-in absentee ballot in general, special, and primary elections for local, state, or federal offices.
5. If the voter is residing outside the United States, or is a member of the United States armed forces, merchant marine, or a family member, and a qualified elector stationed outside the United States, the voter may use the federal write-in absentee ballot transmission envelope as an absentee ballot application simultaneously with the submission of the federal write-in absentee ballot if the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted.

SECTION 6. AMENDMENT. Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving. At any time between the opening and closing of the polls on election day, the election judges of the relevant precinct first shall open the outer envelope and compare the signature on such application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at the election, they shall open the absent voter's envelope in such manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after ~~stamping and initialing~~ or initialing the same as other ballots are ~~stamped and initialed~~ or initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. If the statement is found to be

insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 187

HOUSE BILL NO. 1430

(Representative Klein)

(Senator Krebsbach)

EARLY VOTING

AN ACT to amend and reenact subdivisions d and e of subsection 2 of section 16.1-07-15 of the North Dakota Century Code, relating to early voting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions d and e of subsection 2 of section 16.1-07-15 of the North Dakota Century Code are amended and reenacted as follows:

- d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
 - (1) The pollbooks and access to any electronically maintained pollbooks.
 - (2) ~~Any stamp and inkpad.~~
 - ~~(3)~~ The ballot boxes containing voted ballots.
 - ~~(4)~~ (3) Any void, spoiled, and unvoted ballots.
- e. Ballot boxes containing ballots cast at an early voting precinct may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 188

HOUSE BILL NO. 1432

(Representatives Kasper, Iverson, Thoreson)
(Senator Brown)

CAMPAIGN FINANCE

AN ACT to create and enact sections 16.1-08.1-03.10 and 16.1-08.1-03.11 of the North Dakota Century Code, relating to campaign finance; and to amend and reenact subsection 5 of section 16.1-08.1-01, subsections 2 and 3 of section 16.1-08.1-02, subsection 1 of section 16.1-08.1-03, subsection 3 of section 16.1-08.1-03.1, section 16.1-08.1-03.2, subsection 2 of section 16.1-08.1-03.8, and sections 16.1-08.1-03.9, 16.1-08.1-04, and 16.1-08.1-06.1 of the North Dakota Century Code, relating to campaign finance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 16.1-08.1-02 of the North Dakota Century Code are amended and reenacted as follows:

2. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall include in the statement the name and mailing address of all contributors who contributed in excess of two hundred dollars in the aggregate during the reporting period to the candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office, the aggregated amount of each the reportable contribution contributions from each contributor and the date each the last reportable contribution from each contributor was received.
3. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall file the statement in the office of the secretary of state 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 through the twentieth day before the date of the election. Every candidate committee, or candidate for statewide office who does not

have a candidate committee, and every candidate for legislative office shall file a complete statement for each calendar year no later than the thirty-first day of January of the following year, regardless of whether the ~~candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek sought election at any election through write-in votes during that calendar year.~~

SECTION 3. AMENDMENT. Subsection 1 of section 16.1-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Any political party that receives contributions in excess of two hundred dollars in the aggregate during the reporting period shall file a statement containing ~~a detailed list~~ the aggregated total of all contributions received from a person or political committee which exceed two hundred dollars in amount. The statement must include the name and mailing address of all contributors listed; ~~the~~ For each contributor listed, the statement must include the aggregated amount of each the reportable contribution, contributions and the date each the last reportable contribution was received, and for received. For a state political party, ~~the statement must include a listing that includes~~ list of the name and mailing address of each recipient of an expenditure exceeding two hundred dollars in the aggregate; ~~the~~ For each expenditure recipient listed, the list must include the aggregated amount of each the reportable expenditure, expenditures and the date the last expenditure was made.

SECTION 4. AMENDMENT. Subsection 3 of section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The statement required of a person or measure committee 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. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;
 - b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.

SECTION 5. AMENDMENT. Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.2. Political committee registration. A statewide candidate or ~~a~~ political committee, as described in section 16.1-08.1-01, other than a political

party and a committee organized in support of an individual legislative candidate, 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 fifteen business days of the receipt of any contribution or expenditure made and must be submitted with a registration fee of twenty-five dollars. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office, a political party, or political committee in this state is not required to register as a political committee according to this section if the political committee reports according to section 16.1-08.1-03.7. Registration under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

SECTION 6. AMENDMENT. Subsection 2 of section 16.1-08.1-03.8 of the North Dakota Century Code is amended and reenacted as follows:

2. A multicandidate political committee shall file a detailed list statement containing the aggregated total of all contributions showing the name and mailing address of each contributor who contributed in excess of two hundred dollars in the aggregate to the committee during a reporting period, the aggregated amount of each the reportable contribution contributions in excess of two hundred dollars, and the date each the last reportable contribution was received.

SECTION 7. AMENDMENT. Section 16.1-08.1-03.9 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.9. Contribution statements of ~~other~~ judicial district candidates or a candidate committees committee for elected office in the state except as otherwise defined a judicial district candidate.

1. ~~Except a candidate otherwise defined in section 16.1-01-01, a candidate committee for a~~ A judicial district candidate ~~and or~~ a candidate for a county or city office, in cities with a resident population of five thousand or more as determined by the last federal decennial census, ~~committee for a judicial district candidate shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:~~
 - a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
 - b. The aggregated amount of the contributions from each reportable contribution listed contributor; and
 - c. The date each reportable the last contribution was received from each listed contributor.
2. A candidate ~~or a candidate committee for a judicial district candidate described in this section~~ shall file a statement with the secretary of state no later than the ~~thirtieth twelfth~~ day ~~following~~ before the date of the election in which the candidate's name ~~appeared~~ appears on the ballot or in which the candidate ~~sought~~ seeks election through write-in votes. ~~Any other~~ The reporting period for each of these statements is from the

beginning of that calendar year through the twentieth day before the date of the election.

3. A candidate or a candidate committee described in this section shall also be required to file a complete year-end statement under this section shall file the statement in the office of the county auditor in the candidate's county of residence with the secretary of state no later than the ~~thirtieth~~ thirty-first day of January in the year immediately following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Even if the candidate or candidate committee has not received any contributions in excess of two hundred dollars during the reporting period, the candidate or candidate committee shall file a statement as required by this section.
- ~~3-~~ 4. A candidate or a candidate committee described in this section shall be required to file a year-end statement with the secretary of state for any year in which a contribution was received, regardless of whether the candidate sought election during that calendar year.
5. A statement required by this section to be filed with the ~~appropriate filing officer~~ secretary of state must be:

 - a. Deemed properly filed when deposited with or delivered to the ~~appropriate filing officer~~ secretary of state within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the ~~appropriate filing officer~~ secretary of state within the prescribed time. If the ~~filing officer~~ secretary of state does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the ~~filing officer~~ secretary of state of its nonreceipt.
 - b. Preserved by the ~~filing officer~~ secretary of state 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 ~~filing officer~~ secretary of state and must be open to public inspection.

SECTION 8. Section 16.1-08.1-03.10 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-03.10. Contribution statements of county office candidates or a candidate committee for a county office candidate.

1. A county office candidate or a candidate committee for a county office candidate shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:

 - a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
 - b. The aggregated amount of the contributions from each listed contributor; and

- c. The date the last contribution was received from each listed contributor.
2. A candidate or a candidate committee described in this section shall file a statement with the county auditor 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. The reporting period for each of these statements is from the beginning of that calendar year through the twentieth day before the date of the election.
3. A candidate or a candidate committee described in this section shall also be required to file a complete year-end statement with the county auditor no later than the thirty-first day of January in the year immediately following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Even if the candidate or candidate committee has not received any contributions in excess of two hundred dollars during the reporting period, the candidate or candidate committee shall file a statement as required by this section.
4. A candidate or a candidate committee described in this section shall be required to file a year-end statement with the county auditor for any year in which a contribution was received, regardless of whether the candidate sought election during that calendar year.
5. A statement required by this section to be filed with the county auditor must be:
 - a. Deemed properly filed when deposited with or delivered to the county auditor within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the county auditor within the prescribed time. If the county auditor does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the county auditor of its nonreceipt.
 - b. Preserved by the 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 county auditor and must be open to public inspection.

SECTION 9. Section 16.1-08.1-03.11 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-03.11. Contribution statements of city office candidates or a candidate committee for a city office candidate in cities with a resident population of five thousand or more as determined by the last federal decennial census.

1. A city office candidate or a candidate committee for a city office candidate in cities with a resident population of five thousand or more as determined by the last federal decennial census shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:

- a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
 - b. The aggregated amount of the contributions from each listed contributor; and
 - c. The date the last contribution was received from each listed contributor.
2. A candidate or a candidate committee described in this section shall file a statement with the county auditor 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. The reporting period for each of these statements is from the beginning of that calendar year through the twentieth day before the date of the election.
3. A candidate or a candidate committee described in this section shall also be required to file a complete year-end statement with the county auditor no later than the thirty-first day of January in the year immediately following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Even if the candidate or candidate committee has not received any contributions in excess of two hundred dollars during the reporting period, the candidate or candidate committee shall file a statement as required by this section.
4. A candidate or a candidate committee described in this section shall be required to file a year-end statement with the county auditor for any year in which a contribution was received, regardless of whether the candidate sought election during that calendar year.
5. A statement required by this section to be filed with the county auditor must be:
 - a. Deemed properly filed when deposited with or delivered to the county auditor within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the county auditor within the prescribed time. If the county auditor does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the county auditor of its nonreceipt.
 - b. Preserved by the 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 county auditor and must be open to public inspection.

SECTION 10. AMENDMENT. Section 16.1-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. If any candidate, political party, or political committee receives ~~any contribution~~ contributions in excess of five hundred

dollars in the aggregate in the twenty-day period before any election from any individual contributor, that candidate, political party, political committee, or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.3, ~~or 16.1-08.1-03.8, 16.1-08.1-03.9, 16.1-08.1-03.10, or 16.1-08.1-03.11~~ stating the name and street address of the contributor and the aggregated amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

SECTION 11. AMENDMENT. Section 16.1-08.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06.1. Secretary of state Filing officer to charge and collect fees for late filing. ~~Except for a statement required to be filed under section 16.1-08.1-03.9, any other~~

- ~~1. If a statement, registration, or report required to be filed according to this chapter, or any amended statement, registration, or report requested by the secretary of state, which is not filed within the prescribed time, the secretary of state shall~~ filing officer to whom the report was to be filed is authorized to charge and collect a late fee as follows:
 - ~~4. a.~~ Within six days after the prescribed time, twenty-five dollars;
 - ~~2. b.~~ Within eleven days after the prescribed time, fifty dollars; and
 - ~~3. c.~~ Thereafter, one hundred dollars.
- ~~2. A filing officer may require an amendment to be filed for any statement, registration, or report that is incorrect or incomplete. The amendment must be filed with the filing officer within ten business days after the amendment has been requested in writing. If an amendment is not filed within the prescribed time, the filing officer is authorized to charge and collect a late fee as follows:~~
 - ~~a.~~ Within six days after the date the amendment was due, fifty dollars;
 - ~~b.~~ Within eleven days after the date the amendment was due, one hundred dollars; and
 - ~~c.~~ Thereafter, two hundred dollars.
- ~~3. The secretary of state~~ filing officer may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer.

CHAPTER 189

HOUSE BILL NO. 1429

(Representatives Dietrich, Iverson, Kaldor)

STATEMENT OF INTERESTS FILING

AN ACT to amend and reenact sections 15.1-09-08, 16.1-09-02, and 40-21-07 of the North Dakota Century Code, relating to the filing of statement of interests by candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-08. School district elections - Candidate filings. An individual seeking election to the board of a school district shall prepare and sign a document stating the individual's name and the position for which that individual is a candidate. A candidate shall also file a statement of interests as required by section 16.1-09-02. If the election is held in conjunction with a statewide election, the document these documents must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the sixtieth day before the election. If the election is not held in conjunction with a statewide election, the document must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the thirty-third day before the election.

SECTION 2. 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, petition of nomination, or certificate of write-in candidacy.~~ Candidates for elective office who are required to file such statements shall do so with the filing officer for that election at the time of filing a certificate of nomination, a certificate of endorsement, a petition of nomination, or a certificate of write-in candidacy, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate. A person who has filed a statement as the result of candidacy in a primary election need not refile before running in the following general election. A write-in candidate who is not required to file a certificate of write-in candidacy shall file the statement of interests after the candidate's election at the time of filing the required oath of office. 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 3. AMENDMENT. Section 40-21-07 of the North Dakota Century Code is amended and reenacted as follows:

40-21-07. Petition for nomination of elective official in cities - Signatures required - Withdrawal of petition - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. A candidate shall also file a statement of interests as required by section 16.1-09-02. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election. A candidate may withdraw the candidate's nominating petition at any time before the applicable deadlines for filing nominating petitions provided for in this section. Nominating petitions required by this section may not be circulated or signed more than ninety days before the date when nominating petitions must be filed pursuant to this section. Any signatures to a nominating petition obtained more than ninety days before that date may not be counted.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 190

HOUSE BILL NO. 1103

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

ELECTION NOMINATIONS

AN ACT to amend and reenact subdivision a of subsection 2 of section 16.1-11-06, subdivision a of subsection 2 of section 16.1-11-11, and subsection 1 of section 16.1-13-17 of the North Dakota Century Code, relating to nominating petitions and certificates of nomination filed by candidates and political parties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 16.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

- a. The candidate's name, post-office address, and the title of the office to which the candidate aspires, the appropriate district judgeship number if applicable, and whether the petition is intended for nomination for an unexpired term of office.

SECTION 2. AMENDMENT. Subdivision a of subsection 2 of section 16.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

- a. The candidate's name, post-office address, and the title of the office to which the candidate aspires, the appropriate district number if applicable, and whether the petition is intended for nomination for an unexpired term of office.

SECTION 3. AMENDMENT. Subsection 1 of section 16.1-13-17 of the North Dakota Century Code is amended and reenacted as follows:

1. The name of each person nominated, that person's post-office address, and the office for which that person is nominated, the legislative district number if applicable, and whether the certificate is intended for an unexpired term of office.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 191

HOUSE BILL NO. 1417

(Representative Froseth)
(Senator Krebsbach)

VOTE CANVASSING

AN ACT to amend and reenact sections 15.1-09-16, 16.1-11-38, 16.1-14-01, 16.1-15-01, 16.1-15-02, 16.1-15-04, 16.1-15-05, 16.1-15-06, and 16.1-15-08, subsections 1 and 2 of section 16.1-15-09, and sections 16.1-15-12, 16.1-15-13, 16.1-15-15, 16.1-15-16, 16.1-15-19, 16.1-15-21, 16.1-15-22, 16.1-15-24, 16.1-15-25, 16.1-15-29, 16.1-15-30, 16.1-15-33, 16.1-15-34, 16.1-15-35, 16.1-15-43, 40-21-17, and 58-04-15 of the North Dakota Century Code, relating to tie votes and the canvassing of votes; and to repeal sections 16.1-15-02.1 and 16.1-15-03 of the North Dakota Century Code, relating to canvassing of votes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-16 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-16. School district election - Tie breaker. If the election results in a tie, the business manager of the district shall notify, in writing, the candidates between whom the tie exists. Within three days after the election, at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of the election, in a manner agreed upon by the candidates by a drawing of names. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules of filling an office when a vacancy exists. The school district business manager shall make and keep a record of the proceedings.

SECTION 2. AMENDMENT. Section 16.1-11-38 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-38. Tie vote determination. In case of a tie vote the nominee or nominees must be determined by a ~~coin flip~~, drawing of names in the presence of the candidates upon at least five days' notice to each candidate, by the canvassing board or boards concerned, at a time and place designated by the board. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules of filling an office when a vacancy exists.

SECTION 3. AMENDMENT. Section 16.1-14-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-01. Canvassing votes for presidential electors - Tie vote. The state canvassing board in examining and making a statement of the votes for, and in determining and certifying the persons chosen as, presidential electors shall proceed

in the manner prescribed in this title for the canvass of votes for state officers. The secretary of state likewise shall file and record such statement and determination. In canvassing the returns for presidential electors, the group of electors having the greatest number of votes is to be declared elected. If two or more groups of electors are found to have an equal and the greatest number of votes, the election of one group must be determined by a coin flip drawing of names, with the governor flipping drawing the coin names in the presence of the other members of the state canvassing board.

SECTION 4. AMENDMENT. Section 16.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-01. Ballots void and not counted - Part of ballot may be counted.

1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
 - a. It is not endorsed with the ~~official stamp~~ and initials as provided in this title; or
 - b. It is impossible to determine the elector's choice from the ballot or parts of a ballot, and in the case of electronic voting systems, based upon the criteria established by the secretary of state for counting votes on each electronic voting system authorized for procurement and use in the state according to section 16.1-06-26.
2. ~~If~~ With the exception that a voter must, for paper ballots, darken the oval next to the preprinted name of a candidate or the name of a write-in candidate written on the ballot, if a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If an elector votes for more than the number of persons to be elected to any office, the elector's ballot may be invalidated only insofar as the elector's vote for such office is concerned, and the balance of the elector's ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a party ballot is void if the elector votes for candidates of more than one party.

SECTION 5. AMENDMENT. Section 16.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-02. Board of election to generate canvass votes reports - Location - Public may attend. After the polls are closed, the inspector of elections and the judges shall immediately ~~place the stamp and inkpad in the manila wrapper provided by the county auditor and seal it with the seal provided by the county auditor and then they shall open the ballot boxes and count and compare the ballots with the poll clerks' lists.~~ generate the canvass report from the electronic voting system. The ballots compare and are counted by the machine must be equal in number with the names on the poll clerks' lists; the election board shall proceed immediately to canvass the votes. If the numbers are not equal, the pollbooks are to be rechecked to find the discrepancy. The canvass shall continue without adjournment until completed and must be open to the public. Except in unusual and compelling circumstances, the ~~vote~~ canvass shall occur at the polling place. If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the other location must be in the same precinct and the removal must be approved by the election board. In no case may the ballots be removed to another location ~~for tally~~ prior to generating the canvass report after the

ballot boxes have been opened. Upon approval of a change of location by the election board as provided in this section, the approximate time and location of the canvass must be prominently posted on the main entrance to the polling place, the ballots and records must be moved in the presence of the election board, and the canvass as provided in this chapter must proceed immediately upon arrival at the alternate location.

SECTION 6. AMENDMENT. Section 16.1-15-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-04. Duplicate Three canvass reports prepared by election board - Tally of votes separate One for county auditor and one for each political party. The election board shall ~~prepare duplicate~~ generate at least three canvass reports of the total votes cast for each candidate or measure from the electronic voting system. The figures must agree with the poll clerks' books and the number of ballots. The ballots may not be sealed, nor may the election tally books or the duplicate three canvass reports be signed, by the election board or poll clerk until the figures and counts in the poll clerks' books and in the duplicate canvass reports and the number of ballots cast all show the same totals for ballots cast. ~~The tally of the votes must be separate for each political designation or principle and must be returned as such by the judges and inspector of elections, who shall give the full vote for each candidate. A signed canvass report is to be given to each judge so that the political parties have a record of the votes cast.~~

SECTION 7. AMENDMENT. Section 16.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-05. Oath required of members of election board upon completion of canvass - Contents. At the conclusion of the canvass of the votes, each member of the election board shall sign an affidavit to the effect that the ballots have been counted and the votes canvassed as provided in this chapter and that the returns as disclosed by the tally books of election kept by the poll clerks, and the duplicate canvass reports, agree with the number of ballots cast and are true and correct of the member's own knowledge.

SECTION 8. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns - County auditor to forward pollbook to clerk of United States district court and to the clerk of the North Dakota district court. By twelve noon of the day Immediately following an election the canvass, except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver one of the duplicate signed canvass reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by both of the pollbooks provided for in section sections 16.1-02-13 and 16.1-06-21, and the wrapped and sealed stamp and inkpad, with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. ~~However, no compensation and no mileage may be paid if delivery of the ballots is not made by twelve noon on the day following the election.~~ The compensation and mileage must be paid out of the county treasury on a warrant of the county auditor and is full compensation for returning all used or voided ballots and for delivering the ballot boxes to the proper official. ~~Within thirty days after receipt thereof following each presidential election, each county auditor shall forward~~

one of the pollbooks to the clerk of the United States district court for the district encompassing that county for the clerk's official use. The county auditor shall request return of the pollbook thirty days after receipt thereof by the clerk of the United States district court. The county auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to be used by the clerk for jury selection.

113 SECTION 9. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to clerk of the district court. After ~~having prepared~~ generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots of each kind containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the ~~name~~ names or ~~number~~ numbers of the precinct precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the clerk of the district court. At the meeting of the county canvassing board, the clerk of the district court shall deliver the ballots containing lawful write-in votes from all the precincts within the county. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

SECTION 10. AMENDMENT. Subsections 1 and 2 of section 16.1-15-09 of the North Dakota Century Code are amended and reenacted as follows:

1. Election officers shall ~~make returns~~ generate reports of votes cast upon electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law or rule insofar as such provisions of law or rule are applicable.
2. Within the ability of an electronic counting machine to accurately do so, all ~~ballots not containing write-in votes may~~ are to be counted by the machine prior to the counting and recording of the ballots containing write-in votes. After the election results have been accumulated centrally in the county auditor's office, if the number or percentage of write-in votes for an office meet the criteria established in section 16.1-12-02.2, the county canvassing board shall canvass the votes for the write-in names for that office to determine final election results.

113 Section 16.1-15-08 was also amended by section 17 of House Bill No. 1497, chapter 184.

SECTION 11. AMENDMENT. Section 16.1-15-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-12. Ballot boxes delivered to officers for custody Care and custody of ballot boxes and voting machines. In organized townships or in cities, the inspector of elections, if the inspector is not the officer in question, shall deliver the ballot boxes to the chairman of the board of supervisors of the township or to the executive officer of the city in which the election precinct is situated, as the case may be. The officer shall keep the boxes in safe custody until the next election or hand them over to the officer's successor in office to be kept safely by the successor until such time. At the following general or primary election, the officers shall hand the ballot boxes over to the inspector of elections. In unorganized townships, the inspector of elections shall cause the ballot boxes to be delivered to the county auditor at the same time the ballots are returned to the county auditor. Ballot boxes and voting machines are to be under the care and custody of the county auditor and assigned staff members.

SECTION 12. AMENDMENT. Section 16.1-15-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-13. District judge or clerk of district court to keep ballots ~~forty-five days - Exception - Use of ballots as evidence.~~ Immediately upon receiving the ballots as provided in section 16.1-15-08, the district judge or the clerk of district court shall give ~~a receipt therefor~~ to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes that shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They if the ballots do not contain federal offices and twenty-two months if the ballots contain federal offices. With the exception of the ballots containing lawful write-in votes that may be counted at the meeting of the county canvassing board, the ballots may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. ~~Forty-five~~ Either forty-five days or twenty-two months after the election dependent upon the retention schedule outlined in this section, upon determination by the district judge or the clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the district judge or clerk of district court as provided in this section must be received in evidence without introducing further foundation.

SECTION 13. AMENDMENT. Section 16.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-15. County canvassing board - Composition. The county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of ~~the district committee of all legislative districts which wholly or partly fall within the boundaries of the county as appointed by the district chairmen~~ each of the two political parties ~~which~~ that received the highest number of votes cast for governor at the most recent general election at which a governor was elected. The district chairmen of the political parties from each legislative district within the county shall appoint the respective political party representative. The county canvassing board must be comprised of at least five members, and both political parties must be represented. Each political party from each legislative district within a county may request

representation on the canvassing board if there is equal representation from each of the political parties. For any special county election when the county is composed of more than one legislative district and the election does not involve any legislative or statewide office, the county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected.

SECTION 14. AMENDMENT. Section 16.1-15-16 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-16. Qualifications of members of canvassing board - Replacements - Quorum. No member of the county canvassing board who would not be eligible to serve as a member of the election board pursuant to subsection 2 of section 16.1-05-02 may serve on the county canvassing board. If any of the members of the board other than the representatives of the two political parties are disqualified or cannot serve for any other reason, the county commissioners who would be qualified to serve on the board shall appoint alternates to serve in the place of those members of the board who are disqualified. If any of the representatives of the district committees of the two parties are disqualified or cannot serve for any other reason and if the party wishes to have representation, the district chairmen shall appoint an alternate from their respective district committees to act as a member of the county canvassing board. A majority of the confirmed members of the board or their duly appointed alternates constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof.

SECTION 15. AMENDMENT. Section 16.1-15-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Write-in votes canvassed - Votes from unestablished precincts disregarded. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. Pursuant to section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to ~~stamp and~~ initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted or were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

SECTION 16. AMENDMENT. Section 16.1-15-21 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-21. Primary election statement prepared by county canvassing board - Contents. The county canvassing board, upon canvassing the returns of a primary election, shall prepare a statement signed by the members of the board and filed in the office of the county auditor. The statement must contain all of the following:

1. The names of all candidates voted for at the primary election with the number of votes received by each and for what office. The statement must be made separately for each political party or principle.

2. The names of the persons or candidates of each political party or principle who receive the highest number of votes for the respective offices. If more than one person is required to be elected to a given office at the next ensuing general election, there must be included in the statement the names of so many of the candidates of the party receiving the next highest number of votes for that office as there are persons to be elected to the office at said ensuing general election. The statement must be made separately for each political party.
3. The total number of ballots cast at the primary election.

A separate statement of the votes cast for ~~United States senator, United States representative, state officers, judges of the supreme court, judges of the district courts, and members of the legislative assembly~~ must be transmitted to the secretary of state as provided in this chapter according to reporting instructions specified by the secretary of state.

SECTION 17. 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 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 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 courts, and members of the legislative assembly~~ according to reporting instructions specified by the secretary of state. The abstract must also include the total number of votes cast for initiated or referred measures and constitutional amendments. The certified abstract to be mailed under 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 18. AMENDMENT. Section 16.1-15-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-24. Abstracts of votes of general election made by county canvassing board - Contents. The county canvassing board, when canvassing the returns of a general election, shall make abstracts of votes from the certified reports of the inspectors of elections ~~in the following manner:~~ according to the reporting instructions specified by the secretary of state.

1. ~~The abstract of votes for United States senator and United States representative and for all state officers, judges of the district courts, initiated or referred measures, and constitutional amendments must be on one sheet.~~
2. ~~The abstract of votes for members of the legislative assembly must be on one sheet.~~
3. ~~The abstract of votes for county officers must be on one sheet.~~

SECTION 19. AMENDMENT. Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors.

Within ten days and before four p.m. on the tenth day following any general election, the county auditor of each county, under official seal, shall return to the secretary of state a certified abstract of the votes cast in the county at the election ~~for each candidate for state and congressional offices, judges of the district courts, candidates for the legislative assembly, and for amendments to the constitution and other measures.~~ In presidential years, the county auditor shall make a separate certified abstract of the votes cast for electors for president and vice president of the United States. The separate abstract for presidential electors must be sealed, endorsed "presidential election returns", and according to the reporting instructions specified by the secretary of state. All certified abstract of votes must be transmitted by registered or certified mail to the secretary of state.

SECTION 20. AMENDMENT. Section 16.1-15-29 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-29. Determining tie vote in county offices. If the requisite number of county officers are not elected because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor shall give notice to the persons to appear at the county auditor's office at a time appointed by the county auditor. The persons then shall publicly decide by a ~~coin flip~~ drawing of names which of them must be declared elected. The county auditor shall prepare and deliver to the person elected an election certificate as provided in this chapter.

SECTION 21. AMENDMENT. Section 16.1-15-30 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-30. Determining tie vote for legislative assembly. If the requisite number of persons are not elected to the state senate or house of representatives because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor, if the legislative district in question is within one county, shall notify the secretary of state. The secretary of state shall notify the persons with equal and the highest number of votes to appear in the office of the secretary of state at a time fixed by the secretary of state. The time fixed may not be more than five days from the date the tie is determined by the county auditor. On the date fixed, the persons notified to appear shall publicly decide by ~~the toss of a coin~~ a drawing of names which of them must be declared elected, and the secretary of state shall prepare and deliver to the person elected a certificate of election as provided in this chapter. If the legislative district in question is within the boundaries of more than one county, the county auditor of the county which cast the greater number of votes for the office of governor at the last election at which a governor was elected shall proceed in accordance with this section.

SECTION 22. AMENDMENT. Section 16.1-15-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-33. State canvassing board - Membership - Oath - Quorum - Compensation. The clerk of the supreme court, the secretary of state, the state treasurer, and the chairman, or chairman's designee, of the state committee of the two political parties which cast the highest vote for governor at the last general election at which a governor was elected shall constitute the state canvassing board. The duties of the state canvassing board are ministerial, mandatory, and

nondiscretionary and consist of canvassing the results received from the various counties, ~~computing~~ verifying the computed final results, and certifying the results on the basis of the canvass. After taking the oath required of civil officers, the board shall proceed to canvass publicly the election returns made by the county auditors. Three members of the board constitute a quorum and may make the canvass provided for in this chapter and certify to the result thereof. If less than a quorum attend on the day appointed for a meeting of the board, the members attending may summon other state officers until there is a sufficient number to constitute a quorum. Any other state officer, upon being notified by the members of the board, shall attend without delay and act as a member of the board. Members of the board may be compensated only for their expenses incurred in attending meetings in accordance with sections 44-08-04 and 54-06-09. The compensation must be paid from the appropriation to the secretary of state.

SECTION 23. AMENDMENT. Section 16.1-15-34 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-34. Member of state canvassing board - When disqualified.

When a member of the state canvassing board is a candidate for any office for which that member canvasses the votes, the ~~governor shall designate some other state officer to act in that member's stead at the session of the board while the votes given for that member are being canvassed~~ member shall be removed from that portion of the canvass. If a quorum still exists, the remaining members shall canvass the votes for that office. If a quorum does not exist, another state officer, summoned according to the authorization granted the state canvassing board in section 16.1-15-33, shall be required to canvass the votes for that office.

SECTION 24. AMENDMENT. Section 16.1-15-35 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-35. Meeting of state canvassing board. Not later than seventeen days next following a primary, general, or special election, the state canvassing board shall meet at the office of the secretary of state for the purpose of canvassing and ascertaining the result of the election. The secretary of state shall notify the members of the board of the date and time of the meeting.

SECTION 25. AMENDMENT. Section 16.1-15-43 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-43. When special election ordered. ~~If there is no choice a certificate of election cannot be issued for a judicial district office, other than the office of member of the legislative assembly,~~ If there is no choice a certificate of election cannot be issued for a judicial district office, other than the office of member of the legislative assembly, or a state office because any two or more persons have equal and the highest number of votes, the governor, by proclamation, shall order a new election.

SECTION 26. 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, 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~~ drawing of names in the presence of the governing body of the municipality and in a manner it directs. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to

that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules for filling an office when a vacancy exists.

SECTION 27. AMENDMENT. Section 58-04-15 of the North Dakota Century Code is amended and reenacted as follows:

58-04-15. Tie vote - How determined. If two or more persons have an equal and the highest number of votes for an office, the judges of election, immediately and publicly, shall determine by a ~~coin flip~~ drawing of names who of such persons shall be declared elected. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules for filling an office when a vacancy exists.

SECTION 28. REPEAL. Sections 16.1-15-02.1 and 16.1-15-03 of the North Dakota Century Code are repealed.

Approved April 18, 2005

Filed April 20, 2005

FIRES

CHAPTER 192

HOUSE BILL NO. 1111

(Political Subdivisions Committee)

(At the request of the Insurance Commissioner)

FIRE DISTRICT PAYMENTS

AN ACT to amend and reenact section 18-04-05 of the North Dakota Century Code, relating to fire district payments by the insurance commissioner to cities, rural fire protection districts, and rural fire departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-05 of the North Dakota Century Code is amended and reenacted as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Payments by insurance commissioner. The insurance commissioner shall compute the amounts due to the city fire departments, certified rural fire departments, or fire protection districts entitled to benefits under this chapter on or before ~~September~~ October first of each year. The insurance commissioner shall allocate one-half of the biennial legislative appropriation for distribution under this section to each eligible city not within a fire protection district, each rural fire protection district organized under this title, and each rural fire department certified by the state fire marshal, and pay the amount allocated in September of each year. The allocation must be made in proportion to the amount of insurance company premiums received by insurance companies pursuant to section 26.1-03-17 for policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, and crop hail insurance on property within the city, rural fire protection district, or area served by the certified rural fire department to the total of those premiums for those policies in the state.

Approved March 8, 2005

Filed March 8, 2005

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 193

HOUSE BILL NO. 1287

(Representatives Delmore, Boehning, Charging)

(Senators Bercier, Dever, Lyson)

CONTROLLED SUBSTANCE INGESTION

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to ingesting a controlled substance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Ingesting a controlled substance - Venue for violation - Penalty. A person who intentionally ingests, inhales, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 194

SENATE BILL NO. 2401

(Senators O'Connell, Lyson, Syverson)
(Representatives Galvin, Glassheim, Onstad)

FIREARM PENALTY DURING CONTROLLED SUBSTANCE OFFENSE

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to increased penalties for possessing a firearm during a controlled substance offense; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public career and technical education school, or a public or private college or university;
 - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor; ~~or~~
 - c. The offense involved:
 - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

- (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture of substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, $C_{11}H_{15}NO_2$;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
- (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
- (11) Five hundred grams or more of marijuana; or
- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.

2. The offense is:

- a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
- b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.

- d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 195

HOUSE BILL NO. 1088

(Judiciary Committee)

(At the request of the Attorney General)

STATE TOXICOLOGIST AND CRIME LABORATORY

AN ACT to amend and reenact subsections 4 and 5 of section 19-03.1-37, sections 20.1-13.1-01 and 20.1-13.1-03, subsection 2 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, subsections 3, 4, and 6 of section 20.1-13.1-10, sections 20.1-15-01 and 20.1-15-03, subsection 2 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, subsections 5, 6, and 8 of section 20.1-15-11, section 20.1-15-15, subsection 2 of section 28-32-01, subsection 2 of section 39-06.2-10.3, subsections 2 and 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsection 2 of section 39-20-03.1, subsections 2 and 4 of section 39-20-05, subsections 5, 6, and 8 of section 39-20-07, sections 39-20-13, 39-20-14, 39-24.1-01, and 39-24.1-03, and subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code, relating to the state toxicologist and the state crime laboratory.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the ~~state toxicologist, or the toxicologist's designee, or the~~ director of the state crime laboratory, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, 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 or an~~ employee of the state crime laboratory, ~~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 or an employee of the~~ state crime laboratory, ~~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.

SECTION 2. AMENDMENT. Section 20.1-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-01. Implied consent to determine alcoholic and drug content of blood. Any person who operates a motorboat or vessel in this state 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, "operates" means to be in motion, en route, but not at anchor or aground;

"vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a motorboat or vessel; and "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 director of the state toxicologist crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 20.1-13.1-04, under arrest and informing that person that the person is or will be charged with the offense of operating a motorboat or vessel 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 game warden or 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 motorboat or vessel for up to three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-13-07, the game warden or 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 game warden or 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.

SECTION 3. AMENDMENT. Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The director of the state toxicologist crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or 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 game warden or 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 game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 4. AMENDMENT. Subsection 2 of section 20.1-13.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by saliva or urine sample or by drawing blood as provided in section 20.1-13.1-03 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state ~~toxicologist~~ crime laboratory or the director's designee and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the director's official notification to the person of the director's intent to prohibit the person from operating a motorboat or vessel in this state.

¹¹⁴ **SECTION 5. AMENDMENT.** Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten 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 warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following

¹¹⁴ Section 20.1-13.1-08 was also amended by section 3 of Senate Bill No. 2141, chapter 228.

are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state ~~toxicologist~~ crime laboratory or the director's designee or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state ~~toxicologist~~ crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

SECTION 6. AMENDMENT. Subsections 3, 4, and 6 of section 20.1-13.1-10 of the North Dakota Century Code are amended and reenacted as follows:

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 director of the state ~~toxicologist~~ crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, 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 director of the state ~~toxicologist~~ crime

laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

SECTION 7. AMENDMENT. Section 20.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-01. Implied consent to determine alcoholic and drug content of blood. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test 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, "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "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 director of the state ~~toxicologist~~ crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 20.1-15-04, under arrest and informing that person that the person is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow 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 game warden or 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 a revocation for up to four years of the person's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or 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 game warden or 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.

SECTION 8. AMENDMENT. Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-03. Persons qualified to administer chemical test and opportunity for additional test. Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The director of the state ~~toxicologist~~ crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the

taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or 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 game warden or 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 game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 9. AMENDMENT. Subsection 2 of section 20.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by saliva or urine sample or by drawing blood as provided in section 20.1-15-03 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state toxicologist crime laboratory or the director's designee and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny hunting privileges in this state.

SECTION 10. AMENDMENT. Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten 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 warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten

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 director of the state toxicologist crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state toxicologist crime laboratory or the director's designee or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state toxicologist crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state toxicologist crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

SECTION 11. AMENDMENT. Subsections 5, 6, and 8 of section 20.1-15-11 of the North Dakota Century Code are amended and reenacted are follows:

5. 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 director of the state toxicologist crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state toxicologist crime laboratory or the director's designee. The director of the state toxicologist crime laboratory or the director's designee 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.
6. The director of the state toxicologist crime laboratory or the director's designee 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 director of the state toxicologist crime laboratory or the director's designee 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 director of the state toxicologist crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county

commissioners designates a different official, 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

SECTION 12. AMENDMENT. Section 20.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-15. Screening tests. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the person's breath for the purpose of estimating the alcohol, other drug, or a combination thereof content of the person's blood upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof. A person may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state ~~toxicologist~~ crime laboratory or the director's designee and according to methods and with devices approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to four years of that person's hunting privileges. If the person refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the person's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke a person's hunting privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor does any provision of sections 20.1-15-01

through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the director of the state ~~toxicologist~~ crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a person's blood, breath, saliva, or urine.

¹¹⁵ **SECTION 13. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

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, 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 must 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 made under section 32-12.2-14, 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 classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - 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 commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology 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, North Dakota housing finance agency, North

¹¹⁵ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 6 of Senate Bill No. 2027, chapter 538, and section 29 of Senate Bill No. 2074, chapter 89.

Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.

- 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 pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- 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.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 14. AMENDMENT. Subsection 2 of section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample 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 sample by the director of the state toxicologist crime laboratory or the director's designee showing that person had an alcohol concentration of at least four 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 commercial driver's license or permit and, within twenty-four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license, issue to that person a temporary driver's permit according to section 39-06.2-10.8.

SECTION 15. AMENDMENT. Subsections 2 and 4 of section 39-06.2-10.6 of 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 commercial motor vehicle while having an alcohol concentration of at least four 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 commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four 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 or urine sample from the office of the director of the state ~~toxicologist~~ crime laboratory or the director's designee, 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 warned that the privilege to drive might be suspended based on the results of the test is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the director of the state ~~toxicologist~~ crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the office of the director of the state ~~toxicologist~~ crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

¹¹⁶ **SECTION 16. AMENDMENT.** Section 39-20-01 of 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,

¹¹⁶ Section 39-20-01 was also amended by section 5 of Senate Bill No. 2099, chapter 330.

breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee 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 17. AMENDMENT. Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

39-20-02. Persons qualified to administer test and opportunity for additional test. Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content therein. The director of the state toxicologist crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of breath, saliva, or urine specimen. The person tested may have an individual of the person's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional test by a person does not preclude the admission of the test or tests 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 test or tests.

SECTION 18. AMENDMENT. Subsection 2 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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 director of the state toxicologist crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight 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.

SECTION 19. AMENDMENT. Subsections 2 and 4 of section 39-20-05 of 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 eight 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 eight 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 eight 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 director of the state toxicologist crime laboratory or the director's designee 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.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state ~~toxicologist~~ crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state ~~toxicologist~~ crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

SECTION 20. AMENDMENT. Subsections 5, 6, and 8 of section 39-20-07 of the North Dakota Century Code are amended and reenacted as follows:

5. The results of the chemical analysis 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the person requested to take the chemical test.
6. The director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, 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 director of the state ~~toxicologist~~ crime

laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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.

SECTION 21. AMENDMENT. Section 39-20-13 of the North Dakota Century Code is amended and reenacted as follows:

39-20-13. State ~~toxicologist~~ crime laboratory to examine specimens of fatalities in accidental deaths involving a motor vehicle - Record use. In cases of death resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that specimens of blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after the decedent's death by a coroner, coroner's physician, or other qualified person, prior to embalming. The specimens must be collected and preserved by methods and techniques established by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The specimens so drawn must be sent to the director of the state ~~toxicologist~~ crime laboratory or the director's designee for analysis for alcohol, carbon monoxide, and other drug content. The director of the state ~~toxicologist~~ crime laboratory or the director's designee shall keep a record of all such examinations to be used for statistical purposes. The records must be made available to the director for use by the national highway traffic safety administration in analyzing fatal accidents. The information in the possession of the director may be obtained from the director of the state ~~toxicologist~~ crime laboratory or the director's designee only as provided in this section. Except as provided, the results of the examinations referred to in this section must be used only for statistical purposes, except that the results must be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, must be disseminated to interested state and local officials and made public by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. Any person drawing the specimens and any person making any examination under the terms of this section are immune from all liability, civil or criminal, that might otherwise be incurred or imposed. ~~The individual drawing the specimens must be paid a fee of five dollars by the state toxicologist for each acceptable specimen submitted for analysis under the requirements of this section.~~

SECTION 22. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and 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. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state toxicologist crime laboratory or the director's designee and according to methods and with devices approved by the director of the state toxicologist crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the director of the state toxicologist crime laboratory or the director's designee as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

SECTION 23. AMENDMENT. Section 39-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

39-24.1-01. Implied consent to determine alcohol 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 alcohol, 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 alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee 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.

SECTION 24. AMENDMENT. Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

39-24.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content of the blood. The director of the state ~~toxicologist~~ crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, 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.

SECTION 25. AMENDMENT. Subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code are amended and reenacted as follows:

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 director of the state ~~toxicologist~~ crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, 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 director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this subsection may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 196

SENATE BILL NO. 2341

(Senators Lyson, Nelson, Robinson)
(Representatives Carlisle, Delmore, Price)

MANDATORY TREATMENT PILOT PROJECT

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to drug abuse treatment for first-time felons; to amend and reenact subsections 7 and 8 of section 19-03.1-23 and section 62.1-02-01 of the North Dakota Century Code, relating to drug abuse treatment for first-time felons; to repeal section 19-03.1-30 of the North Dakota Century Code, relating to conditional discharge for possession as first offense; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Mandatory drug abuse assessment and treatment - Presentence investigation - Certified drug abuse treatment programs.

1. When a person located in Walsh, Pembina, or Grand Forks Counties has pled guilty or has been found guilty of a felony violation of subsection 6 of section 19-03.1-23 and that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation of not less than eighteen months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.
2. Upon a plea or finding of guilt of a person subject to the provisions of subsection 1, the court shall order a presentence investigation to be conducted by the department. The presentence investigation shall include a drug and alcohol evaluation conducted by a licensed addiction counselor.
3. If the licensed addiction counselor recommends treatment, the court shall require the person to participate in an addiction program licensed by the department of human services as a condition of the probation. The court shall commit the person to treatment through a licensed addiction program until determined suitable for discharge by the court. The term of treatment shall not exceed eighteen months and may include an aftercare plan. During the commitment and while subject to probation, the person shall be supervised by the department.
4. If the person fails to participate in, or has a pattern of intentional conduct that demonstrates the person's refusal to comply with or participate in the treatment program, as established by judicial finding, the person shall be subject to revocation of the probation. Notwithstanding

subsection 2 of section 12.1-32-02, the amount of time participating in the treatment program under this section is not "time spent in custody" and will not be a credit against any sentence to term of imprisonment.

5. The cost for all drug abuse assessments and certified drug abuse treatment programs shall be initially paid by the department. The court shall order the person to reimburse the department for the assessment and treatment expenses in accordance with the procedures of section 12.1-32-08. The department shall handle the collection of costs from the offenders in the same manner as it collects court costs, fees, and supervision fees.
6. In this section:

 - a. "Department" means the department of corrections and rehabilitation; and
 - b. "Licensed addiction counselor" is a person licensed pursuant to section 43-45-05.1.
7. The provisions of this section shall be implemented as a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for methamphetamine treatment being applied for by the department of human services. The department shall collaborate management of the pilot project with the department of human services to ensure services under the federal grant program for one-half of the offenders mandated by the court to submit to mandatory treatment, not to exceed twenty-three individuals. The department shall hire a program manager to manage the pilot project, collect statistics regarding the operation of the program, track participants in the program, and provide a report to the attorney general, the legislative council for distribution during the November 2006 legislative council meeting, and the sixtieth legislative assembly detailing the number of participants in the program, the cost of the program, relapse statistics, and other data concerning the effectiveness of the program.

SECTION 2. AMENDMENT. Subsections 7 and 8 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

7. A Except as provided by section 1 of this Act, a person who violates this chapter or chapter 19-03.4 must undergo a drug addiction evaluation by an appropriate a licensed addiction treatment program counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a felony violation of this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for a misdemeanor violation of this chapter or chapter 19-03.4.
8. Notwithstanding section 19-03.1-30, whenever When a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 3. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Persons who are not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is latest.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is latest.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, ~~granted a conditional discharge in accordance with section 19-03.1-30,~~ the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

SECTION 4. REPEAL. Section 19-03.1-30 of the North Dakota Century Code is repealed.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$515,855, or so much of the sum as may be necessary, to the department of

corrections and rehabilitation for the purpose of funding the mandatory treatment pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 6. APPROPRIATION. There is appropriated from special funds derived from federal funds and other income, the amount of \$448,471, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the mandatory treatment pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 19, 2005

Filed April 20, 2005

CHAPTER 197

HOUSE BILL NO. 1290

(Representatives Klemin, Norland, Thorpe)
(Senators Seymour, Trenbeath, Triplett)

BAIL BONDS

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to bail bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Bail - Additional conditions of release. A court shall impose as a condition of release or bail that an individual who has been arrested upon a felony violation of this chapter or chapter 19-03.4 not use a controlled substance without a valid prescription from a licensed medical practitioner and that the individual submit to a medical examination or other reasonable random testing for the purpose of determining the person's use of a controlled substance. The court shall order the frequency of the random testing and the location at which random testing must occur. The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost. Submission of an individual to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

1. The individual has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;
2. The individual will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and
3. Not imposing examination or testing as a condition of release will pose no danger to the individual or to the community.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 198

SENATE BILL NO. 2166

(Senators J. Lee, Kilzer, Mathern)

(Representatives Delzer, Kreidt)

PAIN TREATMENT AND CARE

AN ACT to amend and reenact subsection 2 of section 19-03.3-01 and sections 19-03.3-02, 19-03.3-03, 19-03.3-04, and 19-03.3-05 of the North Dakota Century Code, relating to treatment and care for pain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 19-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Intractable pain ~~Pain~~" means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts acute pain and chronic pain. Acute pain is the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus and typically is associated with invasive procedures, trauma, or disease, and is generally time-limited. Chronic pain is a state that persists beyond the usual course of an acute disease or healing of an injury or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

SECTION 2. AMENDMENT. Section 19-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

19-03.3-02. Prescription or administration of drugs by physician. Notwithstanding any other provision of law, a physician may prescribe or administer controlled substances to a patient in the course of the physician's treatment of the patient for ~~intractable~~ pain. A physician shall keep records of purchases and disposals of controlled substances prescribed or administered under this section. The records must include the date of purchase, the date of sale or administration by the physician, the name and address of the patient, and the reason for the prescribing or the administering of the substances to the patient.

SECTION 3. AMENDMENT. Section 19-03.3-03 of the North Dakota Century Code is amended and reenacted as follows:

19-03.3-03. Restriction by hospital or health care facility of prescribed drug use prohibited. No hospital or health care facility may forbid or restrict the use of controlled substances when prescribed or administered by a physician having staff privileges at that hospital or health care facility for a patient diagnosed and treated by a physician for ~~intractable~~ pain.

SECTION 4. AMENDMENT. Section 19-03.3-04 of the North Dakota Century Code is amended and reenacted as follows:

19-03.3-04. Disciplinary action for prescribing or administering drug treatment prohibited. The board may not discipline a physician for prescribing or administering controlled substances in the course of treatment of a patient for ~~intractable~~ pain under this chapter.

SECTION 5. AMENDMENT. Section 19-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

19-03.3-05. Application. This chapter does not apply to a person being treated by a physician for chemical dependency because of the person's use of controlled substances not related to treatment for pain. This chapter does not authorize a physician to prescribe or administer ~~controlled substances to a person the physician knows is using controlled substances for nontherapeutic~~ any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes. A person to whom controlled substances are prescribed or administered for ~~intractable~~ pain is not exempt from section 39-08-01 or 39-20-04.1.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 199

HOUSE BILL NO. 1346

(Representatives Thoreson, Horter, Kingsbury)
(Senators Flakoll, Klein, O'Connell)

METHAMPHETAMINE PRECURSOR DRUG SALE

AN ACT to amend and reenact section 19-03.4-08 of the North Dakota Century Code, relating to retail sale of a methamphetamine precursor drug; to provide a penalty; 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 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-08. Retail or over-the-counter sale of methamphetamine precursor drugs - Penalty.

1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:
 - a. Sales in packages containing not more than a total of ~~three~~ two grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and
 - b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.
3. a. When offering a methamphetamine precursor drug for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the methamphetamine precursor drug, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 5, and shall do at least one of the following:
 - (1) Maintain continuous recorded video surveillance of the portion of the premises where the methamphetamine precursor drug is displayed for sale and place signs or placards giving notice to the public of the surveillance;
 - (2) Place the methamphetamine precursor drug behind a counter or other barrier accessible only to the person making the sale of the drug; or

- (3) Display only one package of any brand or type of a methamphetamine precursor drug for purchase in an area accessible to the public.
- b. The person shall maintain the record of identification required by this subsection for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose.
4. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.
4. 5. It is a prima facie case of a violation of subsection 3 4 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:
- a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
- b. Includes a passport, military identification card, or driver's license.
- 6- 6. It is an affirmative defense to a violation of subsection 3 4 if:
- a. The person making the sale required and obtained proof of age from the purchaser;
- b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;
- c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
- d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
- 6- 7. This section does not apply to pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
- 7- 8. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 ~~or~~, 3, or 4 is guilty of an infraction.

- ~~8.~~ 9. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where methamphetamine precursor drugs are available for sale is not subject to the penalties of this section if the person:
- a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
 - b. Documents that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such drugs.

The approval of the training program by the attorney general is not subject to chapter 28-32.

- ~~9.~~ 10. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on June 1, 2005.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 200

SENATE BILL NO. 2346

(Senators Lindaas, Trenbeath, Urlacher)
(Representatives Aarsvold, Herbel, Monson)

MTBE IN GASOLINE RESTRICTED

AN ACT to create and enact a new section to chapter 19-10 of the North Dakota Century Code, relating to the sale of gasoline containing methyl tertiary butyl ether.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-10 of the North Dakota Century Code is created and enacted as follows:

Retail sale of gasoline containing methyl tertiary butyl ether - Restriction. A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a person may ship gasoline containing methyl tertiary butyl ether within the state for disposition outside the state, including storage coincident to shipment.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 201

HOUSE BILL NO. 1093

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PET FOOD AND FEED REGULATION

AN ACT to amend and reenact subsections 1 and 3 of section 19-13.1-03 and section 19-13.1-06 of the North Dakota Century Code, relating to the registration and licensing of pet food and commercial feed and inspection of commercial feed; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 19-13.1-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of one hundred dollars per product. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. Registration covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the commissioner for each location. Each person who sells commercial feed at retail, other than pet food or specialty pet food, shall obtain a feed retailer's license from the commissioner. The license application must be on forms furnished by the commissioner and must be accompanied by a fee of one hundred dollars for feed manufacturers or fifty dollars for feed retailers. The license covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

SECTION 2. AMENDMENT. Section 19-13.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection fees. There must be paid to the commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms] with a minimum of ten dollars. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. If the statement is not received by January thirty-first, a penalty of ten percent of the amount owed, with a minimum of ten dollars and a maximum of two hundred fifty dollars, may be assessed. The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.
2. Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state and the commissioner has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 202

SENATE BILL NO. 2371

(Senators Andrist, Flakoll, Klein, G. Lee)

MINIMUM RISK PESTICIDES

AN ACT to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to minimum-risk pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Minimum-risk pesticide - Certificate of exemption.

1. Section 19-18-03 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Insecticide, Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A fee equal in amount to the fee set under section 19-18-04 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 203

HOUSE BILL NO. 1241

(Representatives Koppelman, Iverson, Kasper, Thoreson)
(Senators Christmann, Trenbeath)

OBESITY CIVIL IMMUNITY

AN ACT to provide for limited liability for a food producer, processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser for a claim of injury resulting from weight gain, obesity, or any health condition related to weight gain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Limited liability.

1. Except as provided in subsection 2, a producer, processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser of a food, as defined in section 201(f) of the Federal Food Drug and Cosmetic Act [21 U.S.C. 321(f)], or an association of one or more of those entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.
2. Subsection 1 does not apply to the claim of obesity or weight gain that is based on:
 - a. A material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, or ordinance and the claimed injury was proximately caused by the violation; or
 - b. Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

SECTION 2. Pleading requirements.

1. In any action commenced under this Act, the complaint or petition must state with particularity the following:
 - a. The statute, rule, regulation, ordinance, or other law that was allegedly violated;
 - b. The facts that are alleged to constitute a material violation of the statute, rule, regulation, ordinance, or other law; and
 - c. The facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff.

2. The complaint or petition must also state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that the violation was injurious to consumers.

SECTION 3. Stay pending motion to dismiss.

1. In any action commenced under this Act, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.
2. During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under rule 34 of the North Dakota Rules of Civil Procedure.

SECTION 4. APPLICATION. This Act applies to all claims filed after the effective date of this Act, regardless of when the claim arose.

Approved March 31, 2005
Filed March 31, 2005

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 204

SENATE BILL NO. 2041

(Legislative Council)
(Natural Resources Committee)

HUNTING ON INDIAN LAND

AN ACT to create and enact a new subsection to section 20.1-01-02 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to hunting on Indian land; and to amend and reenact sections 20.1-04-06 and 20.1-05-03 of the North Dakota Century Code, relating to transportation of game and fish taken on Indian lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁷ **SECTION 1.** A new subsection to section 20.1-01-02 of the North Dakota Century Code is created and enacted as follows:

"Indian land" means land within the exterior boundaries of an Indian reservation held in trust by the federal government for the benefit of an Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

General game license not required for hunting on Indian land. An individual hunting on Indian land pursuant to a tribal hunting license is not required to possess a state license to hunt on such land.

SECTION 3. AMENDMENT. Section 20.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-06. Possession limit of game birds. ~~No~~ A person may not possess, control, ship, transport, or store, can, or otherwise preserve, more than the number authorized in the governor's proclamation of any species of game bird mentioned in this chapter. However, properly tagged game birds legally taken out of state or taken on Indian land may be possessed, transported, or shipped in state.

¹¹⁷ Section 20.1-01-02 was also amended by section 1 of House Bill No. 1276, chapter 221, section 1 of Senate Bill No. 2100, chapter 205, and section 1 of Senate Bill No. 2338, chapter 229.

SECTION 4. AMENDMENT. Section 20.1-05-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-05-03. Season for taking and transporting big game - Bag limit. A person having a big game hunting license as prescribed in this title may take, kill, and transport, during the open or lawful season, one big game animal in this state. The open or lawful season on deer and antelope begins at twelve noon central standard time and on elk, moose, and bighorn sheep begins one-half hour before sunrise on any designated Friday as established by gubernatorial proclamation in accordance with this title. This section does not prohibit the transportation, shipment, or possession within this state of properly tagged big game legally taken in other states or taken on Indian land.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 205

SENATE BILL NO. 2100

(Natural Resources Committee)

(At the request of the Game and Fish Department)

RESIDENCY FOR GAME AND FISH PURPOSES

AN ACT to amend and reenact subsection 33 of section 20.1-01-02 of the North Dakota Century Code, relating to the definition of resident for game and fish purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁸ **SECTION 1. AMENDMENT.** Subsection 33 of section 20.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

33. "Resident" means any person who has actually lived within this state or maintained that person's ~~home~~ residence therein for at least six months immediately preceding the date that residence is to be determined. A person's residence is the place where the person remains when not called elsewhere for special or temporary purposes. A resident can only have one residence and a residence cannot be lost until another is gained. A residence or home is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. A rental property, vacant lot, or house, cabin, or premises used primarily for business or recreational pursuits may not be considered a residence. A "nonresident" is any person who has not ~~done so~~ actually lived within this state or maintained that person's residence within this state for at least six months immediately preceding the date that residence is to be determined.

Approved March 8, 2005

Filed March 8, 2005

¹¹⁸ Section 20.1-01-02 was also amended by section 1 of House Bill No. 1276, chapter 221, section 1 of Senate Bill No. 2041, chapter 204, and section 1 of Senate Bill No. 2338, chapter 229.

CHAPTER 206

HOUSE BILL NO. 1239

(Representatives Porter, DeKrey, Haas, Herbel)
(Senators Freborg, Urlacher)

OFFROAD HUNTING

AN ACT to amend and reenact section 20.1-01-07 of the North Dakota Century Code, relating to offroad hunting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁹ **SECTION 1. AMENDMENT.** Section 20.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-07. Hunting big game or small game other than waterfowl or cranes with motor-driven vehicles prohibited - Exception - Motor-driven vehicle use in transporting big game restricted. Except as provided in subsection 11 of section 20.1-02-05 and as otherwise provided in this section, ~~no~~ a person, other than the landowner, without the written permission of the landowner or a lessee who actively farms or ranches that land, while hunting big game or small game, other than waterfowl or cranes, statewide, may not use a motor-driven vehicle on any land other than an established road or trail, unless that person has reduced a big game animal to possession and cannot easily retrieve the big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, but after retrieval, the motor-driven vehicle must be returned to the established road or trail along the same route it originally departed. A person may not use a motor-driven vehicle on any land other than an established road or trail to hunt upland game during the deer gun season. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. ~~No~~ A person, other than the landowner, without the written permission of the landowner or a lessee who actively farms or ranches that land, while hunting big game or small game, other than waterfowl or cranes, statewide, may not drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail. The provisions of this section relating to hunting big game or small game while using a motor-driven vehicle on any land other than an established road or trail without the written permission of the landowner or a lessee who actually farms or ranches that land do not apply to the hunting of big game during an open and lawful season for small game.

Approved April 11, 2005

Filed April 12, 2005

¹¹⁹ Section 20.1-01-07 was also amended by section 1 of House Bill No. 1138, chapter 207.

CHAPTER 207

HOUSE BILL NO. 1138

(Natural Resources Committee)

(At the request of the Game and Fish Department)

GAME AND FISH FUND AND HEART BUTTE MANAGEMENT

AN ACT to amend and reenact sections 20.1-01-07, 20.1-02-05, 20.1-02-16.1, 20.1-02-16.5, 20.1-03-12, 20.1-06-13, and 20.1-07-02 of the North Dakota Century Code, relating to agreements with the bureau of reclamation for management of the Heart Butte area and deposit of interest income in the game and fish department private land habitat and access improvement fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁰ **SECTION 1. AMENDMENT.** Section 20.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-07. Hunting big game or small game other than waterfowl or cranes with motor-driven vehicles prohibited - Exception - Motor-driven vehicle use in transporting big game restricted. Except as provided in subsection 44 10 of section 20.1-02-05, no person, while hunting big game or small game, other than waterfowl or cranes, statewide, may use a motor-driven vehicle on any land other than an established road or trail, unless that person has reduced a big game animal to possession and cannot easily retrieve the big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, but after retrieval, the motor-driven vehicle must be returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. No person, while hunting big game or small game, other than waterfowl or cranes, statewide, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail.

¹²¹ **SECTION 2. AMENDMENT.** Section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-05. Powers of director. The director may:

¹²⁰ Section 20.1-01-07 was also amended by section 1 of House Bill No. 1239, chapter 206.

¹²¹ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1189, chapter 210, section 1 of House Bill No. 1220, chapter 208, and section 1 of Senate Bill No. 2334, chapter 209.

1. Fix the salaries and the necessary travel and other expenses of department personnel subject to law and legislative appropriations.
2. Employ any part-time personnel necessary to run the director's office and remove the employees at will. Salaries and necessary traveling and other expenses of these appointees must be authorized, audited, and paid in the same manner as salaries and expenses of state officers.
3. Accept from any person, or gather, or purchase, fish, spawn, or fry, for distribution in state waters.
4. Take alive at any time, under the director's personal supervision or under the personal supervision of any of the director's bonded appointees, any birds or animals for propagation purposes or for exchange with other states and foreign countries for game birds and animals of other species.
5. Order additional protection for any fish with an open season when, after investigation, the director finds danger of extinction, undue depletion in any waters, or to aid in the propagation and protection of immature fish, by prescribing how, how many, where, and when the fish may be taken. The orders have the force of law.
6. Take or cause to be taken at any time from any state public waters any suckers, carp, or pickerel.
7. With the governor's approval, purchase, lease, or condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state.
8. Lease up to ninety-nine years any department land, for the purpose of development and improvement, to any nonprofit corporation, upon consideration of specified improvements to be made by the corporation and other improvements the department and the corporation may agree upon. The lease must provide that all funds received by the corporation through lease of the property be expended upon the leased premises for development and improvements. The corporation has the authority, subject to approval by the director, to sublease the premises for cabin sites and other recreational purposes. Upon termination of the lease, the leased property, together with all improvements, reverts to the department.
9. With the governor's approval, enter agreements with the bureau of reclamation for the management of lands in the Heart Butte area acquired by the bureau for the construction of dams on lakes or streams. Revenues derived from the management of these lands or received from any federal agency for expenditure upon these lands may not be commingled with other game and fish funds, but must be deposited by the director in a separate account. These funds are appropriated for expenditure for purposes as may be agreed upon by the bureau of reclamation, the United States fish and wildlife service, the national park service, and the director. The authority granted by this subsection is effective only until the lands are resold to the former landowners by the bureau of reclamation.

- ~~40.~~ Secure specimens of game birds, animals, and fish for breeding purposes by purchase or otherwise and by exchange with the game commissions or state game wardens of other states or countries.
- ~~44.~~ 10. Issue special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife or who have lost the use of an arm at or below the elbow. The application must be accompanied by a physician's statement verifying the person's condition, and if used to hunt on lands controlled by the board of university and school lands, must designate the land on which the individual intends to hunt. The permittee must have permission from the lessee and the commissioner of university and school lands to hunt on lands controlled by the board of university and school lands. A permit issued under this subsection allows the permittee to drive, or to be driven, onto any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, may be a hunter, unless the other person is also a permittee. Provided, however, that if the land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee must first obtain the consent of the owner or lessee to hunt on the land in the manner provided in this title.
- ~~42.~~ 11. Issue to any individual, who is blind, is a paraplegic, or who has lost the use of one or both arms a special permit to hunt game with a crossbow if that individual otherwise complies with and qualifies under the licensing and other provisions of this title. For purposes of this subsection, an individual who is blind means an individual who is totally blind, whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or in whom the widest diameter of the visual field is no greater than twenty degrees.
- ~~43.~~ 12. Issue any resident license prescribed by this title to an individual who has come to the state with a bona fide intention of becoming a resident, even though that individual has not been a resident of this state for the required time period immediately preceding the application for the license; to any individual who is a member of the United States armed forces and who is within the state on duty or leave; to any employee of the United States fish and wildlife service or the conservation department of any state or province of Canada in the state to advise or consult with the department; or to any nonresident full-time student living in this state who is a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program attending an institution under the jurisdiction of the state board of higher education or a tribal college. Except for a license issued to a nonresident full-time student living in this state who is a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program attending an institution under the jurisdiction of the state board of higher education or a tribal college, a license may not be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection does not apply to lottery permits, except that the director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing

fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

- ~~44.~~ 13. Adopt rules, and issue permits for the transporting or introducing of fish, fish eggs, small game, big game, or fur-bearers after determining that the fish, fish eggs, birds, or animals have been properly inspected for disease, and that the transplanting or introduction will be in compliance with state laws and rules. No person may transplant or introduce any fish or fish eggs into any of the public waters of this state, or transplant or introduce any species of small game, big game, or fur-bearers into this state without obtaining a permit from the director.
- ~~45.~~ 14. Pursuant to section 4-01-17.1, cooperate with the agriculture commissioner, the United States fish and wildlife service, and other agencies in the destruction of predatory animals, destructive birds, and injurious field rodents. The director may adopt rules in accordance with organized and systematic plans of the department of the interior for the destruction of these birds and animals. The director may determine the necessity and issue permits and rules and regulations therefor for the operation and use of private aircraft to assist in the destruction of the above birds and animals and aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
- ~~46.~~ 15. Exercise authority to establish programs and rules and administer state and federal funds provided to the state for the preservation and management of resident species determined by the director to be threatened or endangered species of wildlife. The authority exercised must be in compliance with the Endangered Species Act of 1973, Public Law 93-205. Any person who violates rules adopted under this subsection is guilty of a class B misdemeanor.
- ~~47.~~ 16. 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 director shall place these funds in a special fund called the "game and fish department private land habitat and access improvement fund".
- ~~48.~~ 17. Carry out a private land habitat and access improvement program by:
- a. Entering 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 local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. Leasing and 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 a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which 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.
- ~~49.~~ 18. Subject to prior approval of the attorney general, lease or exchange lands under the director's jurisdiction or control which are deemed necessary for the improved management of wildlife resources.
- ~~29.~~ 19. Subject to prior approval of the attorney general, impose any conditions or reservations to the leases or exchanges as the director determines necessary.
- ~~24.~~ 20. Adopt rules and issue permits for conducting fishing contests involving public waters of the state. The director by rule shall define the term "fishing contest" and shall set criteria for which a fishing contest permit is required. The director may deny permits. No person may conduct a fishing contest on public waters without first receiving a permit issued by the director.
- ~~22.~~ 21. Issue duplicates of lost or destroyed game and fish licenses or permits. The procedure for reissuing the licenses or permits and fees to be charged must be prescribed by the director by rule.
- ~~23.~~ 22. Establish noncriminal penalties for any rules adopted by the director. The maximum noncriminal penalty that may be set by the director is a fine of two hundred fifty dollars. Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title.
- ~~24.~~ 23. Issue, as a means of encouraging and promoting economic development in this state, complimentary fishing licenses to nonresident visiting dignitaries. The circumstances and conditions of complimentary fishing licenses issued must be determined by the director. The number of complimentary licenses may not exceed fifty licenses per year. The director shall determine the visiting dignitaries to be of national or international stature before they are eligible for complimentary licenses.
- ~~25.~~ 24. Carry out a coyote depredation prevention program by conducting practices that will alleviate depredations caused by coyotes.
- ~~26.~~ 25. Issue, as a means of rewarding dedication to teaching firearm hunter safety, complimentary lifetime resident certificates and combination licenses provided under section 20.1-03-11.1 to resident certified hunter education volunteer instructors. Eligible persons must have served as a lead or assistant certified hunter education volunteer instructor in this state for a minimum of one course in each of thirty years. The license is known as the "lifetime combination license" and must be signed by the director and the person receiving the license. The license must be revoked by the director if the license holder is convicted of a felony or found to have violated any provision of this title.

- ~~27.~~ 26. Carry out a program that targets waterfowl resting areas within the private lands initiative program which includes payments to private landowners for lease of waterfowl resting areas on private lands that during the term of the lease provides limited public access for the hunting of waterfowl.

¹²² **SECTION 3. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval. All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund, special accounts, or portions of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below ten million dollars, unless otherwise authorized by the budget section.

SECTION 4. AMENDMENT. Section 20.1-02-16.5 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.5. Motorboat programs and safety account - Use. The director shall deposit all motorboat license fees in a special account within the game and fish fund to be known as the motorboat programs and safety account. Funds placed in the motorboat programs and safety account ~~and interest earned on the account~~ may be used only for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat licensing administration. All money derived from the investment of the account, or portions of the account, must be credited in accordance with section 20.1-02-16.1.

¹²³ **SECTION 5. AMENDMENT.** Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12. Schedule of fees for licenses and permits. The various license and permit fees are as follows:

1. For a resident, age sixteen and over, small game hunting license, six dollars.
2. For a nonresident small game hunting license, eighty-five dollars.

¹²² Section 20.1-02-16.1 was also amended by section 9 of House Bill No. 1018, chapter 18.

¹²³ Section 20.1-03-12 was also amended by section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

3. For a resident big game hunting license, twenty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. Except for a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents under subsection 4 of section 20.1-03-11, for a nonresident big game hunting license, two hundred dollars, and for a nonresident bow license, two hundred dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1. For a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, fifty dollars.
5. For a resident fur-bearer license, seven dollars.
6. For a resident fishing license, ten dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee is three dollars.
7. For a nonresident fishing license, thirty-five dollars.
8. For a nonresident short-term seven-day fishing license, twenty dollars.
9. For a resident husband and wife fishing license, fourteen dollars.
10. For a nonresident nongame hunting license, fifteen dollars.
11. For a wild turkey permit, eight dollars.
12. For an annual general game license, three dollars.
13. For a permit to propagate, domesticate, or possess protected wildlife, five dollars.
14. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.
15. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by that person within this state.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than that person's home or to points outside this state, three dollars.

19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, twelve dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, twenty-four dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty-three dollars.
21. To operate watercraft used for hire, the following license fees apply for three years:
 - Class 1. Each craft capable of carrying two adults of average weight, six dollars.
 - Class 2. Each craft capable of carrying three adults of average weight, six dollars.
 - Class 3. Each craft capable of carrying four adults of average weight, six dollars.
 - Class 4. Each craft capable of carrying five adults of average weight, six dollars.
 - Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.
 - Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.
 - Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.
 - Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.
22. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, fifteen dollars for each hoop-net or trap, and fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.
23. For a resident paddlefish tag annual license, three dollars per tag.
24. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.
25. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
26. For an annual license to sell minnows or other live bait at retail, fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.
27. For an annual license to operate a private fish hatchery, seventy-five dollars.

28. For a resident commercial frog license, fifty dollars.
29. For a nonresident commercial frog license, two hundred dollars.
30. For a resident frog license, three dollars.
31. For a resident husband and wife frog license, five dollars.
32. For a shooting preserve operating permit:
 - a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
 - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
33. For a nonresident waterfowl hunting license, eighty-five dollars.
34. For a nonresident husband and wife fishing license, forty-five dollars.
35. For a nonresident short-term three-day fishing license, fifteen dollars.
36. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
37. For a combination license, thirty-two dollars.
38. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
39. For a resident swan license, five dollars.
40. For a nonresident swan license, twenty-five dollars.
41. For a resident and nonresident sandhill crane license, five dollars.
42. For a resident commercial clam license, one hundred dollars.
43. For a nonresident commercial clam license, one thousand dollars.
44. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the director a surety bond in the sum of two thousand dollars.
45. For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
46. For a bighorn sheep license issued to a nonresident, five hundred dollars.
47. For a nonresident reciprocal trapping license, two hundred fifty dollars.
48. For a nonresident spring white goose license, fifty dollars.

49. For a resident certificate fee, one dollar, and for a nonresident certificate fee, two dollars. An agent may not charge a service fee for issuing a resident or nonresident certificate fee.

The fees for these licenses and permits, ~~except for motorboat license fees,~~ must be deposited with the state treasurer and credited to the game and fish fund. Forty-five dollars of each nonresident big game hunting license fee must be used for the private land initiative.

SECTION 6. AMENDMENT. Section 20.1-06-13 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-13. Property rights - Fish wild by nature. Any person, firm, corporation, or limited liability company raising and owning any lawfully possessed fish, wild by nature, has the same property rights therein as enjoyed by owners of domestic fish. They are, however, subject to all rules adopted by the director regarding the introduction and release into the state of the fish, as provided in subsection ~~44~~ 13 of section 20.1-02-05.

SECTION 7. AMENDMENT. Section 20.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-02. Property rights - Wild fur-bearing animals. Any person, firm, corporation, or limited liability company raising and owning any protected fur-bearing animal, or in possession of the pelt of any wild animal lawfully obtained, has the same property rights therein as enjoyed by owners of domestic animals. They are, however, subject to all rules adopted by the director in regard to the introduction and release into the state of the animals, as provided in subsection ~~44~~ 13 of section 20.1-02-05.

Approved March 8, 2005
Filed March 8, 2005

CHAPTER 208

HOUSE BILL NO. 1220

(Representatives Weisz, DeKrey, Herbel)

CROSSBOW USE BY HANDICAPPED INDIVIDUALS

AN ACT to amend and reenact subsection 12 of section 20.1-02-05 of the North Dakota Century Code, relating to use of crossbows by handicapped individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁴ **SECTION 1. AMENDMENT.** Subsection 12 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue to any individual, who is blind, is a paraplegic, or who has lost the use of one or both arms a special permit to hunt game with a crossbow if that individual otherwise complies with and qualifies under the licensing and other provisions of this title. Battery-powered and electronic-lighted sight pins and telescopic sights not exceeding a maximum power of four by thirty-two millimeters may be attached to crossbows used for hunting under this subsection. However, an individual who is blind and who receives a special permit to hunt game with a crossbow under this subsection may hunt only on a preserve or area approved by the director. For purposes of this subsection, an individual who is blind means an individual who is totally blind, whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or in whom the widest diameter of the visual field is no greater than twenty degrees.

Approved March 15, 2005

Filed March 16, 2005

¹²⁴ Section 20.1-02-05 was also amended by section 2 of House Bill No. 1138, chapter 207, section 1 of House Bill No. 1189, chapter 210, and section 1 of Senate Bill No. 2334, chapter 209.

CHAPTER 209

SENATE BILL NO. 2334

(Senators Hacker, Erbele, Freborg, Heitkamp)
(Representatives Brandenburg, Kretschmar)

NONRESIDENT STUDENT HUNTING

AN ACT to amend and reenact subsection 13 of section 20.1-02-05 of the North Dakota Century Code, relating to hunting by nonresident students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁵ **SECTION 1. AMENDMENT.** Subsection 13 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

13. Issue any resident license prescribed by this title to an individual who has come to the state with a bona fide intention of becoming a resident, even though that individual has not been a resident of this state for the required time period immediately preceding the application for the license; to any individual who is a member of the United States armed forces and who is within the state on duty or leave; to any employee of the United States fish and wildlife service or the conservation department of any state or province of Canada in the state to advise or consult with the department; or to any nonresident full-time student living in this state who is ~~a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program~~ attending an institution under the jurisdiction of the state board of higher education, a private institution of higher education, or a tribal college. Except for a license issued to a nonresident full-time student living in this state who is ~~a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program~~ attending an institution under the jurisdiction of the state board of higher education, a private institution of higher education, or a tribal college, a license may not be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection does not apply to lottery permits, except that the director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

Approved March 16, 2005
Filed March 17, 2005

¹²⁵ Section 20.1-02-05 was also amended by section 2 of House Bill No. 1138, chapter 207, section 1 of House Bill No. 1189, chapter 210, and section 1 of House Bill No. 1220, chapter 208.

CHAPTER 210

HOUSE BILL NO. 1189

(Representatives Porter, DeKrey, Martinson, Nelson)
(Senators Lyson, Tollefson)

PRIVATE LAND ACCESS PROGRAM

AN ACT to create and enact a new subsection to section 20.1-02-05 and a new section to chapter 20.1-02 of the North Dakota Century Code, relating to establishing a private land access program; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁶ **SECTION 1.** A new subsection to section 20.1-02-05 of the North Dakota Century Code is created and enacted as follows:

Carry out a private land access improvement program by entering leases with private landowners to provide access for hunting on private land. To be eligible for funding under this subsection, state funds for each lease must be supplemented by local funds. Public access to lands leased under this subsection may not be prohibited.

SECTION 2. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Private land access program - Guidelines.

1. In the implementation of the private land access program provided for under section 1 of this Act, the department shall develop hunter-access partnerships with communities under the following guidelines:
 - a. Use current department hunter-access improvement programs, agreements, and payment rates.
 - b. Pay one hundred percent of the standard program payment.
 - c. Hunter-access tracts obtained through community partnerships must meet minimum department habitat criteria and standards.
 - d. Land must be open to public access and posted as open by the department and may include information identifying the community partner.
 - e. Land must be identified in the annual private land open to sportsmen guide.

¹²⁶ Section 20.1-02-05 was also amended by section 2 of House Bill No. 1138, chapter 207, section 1 of House Bill No. 1220, chapter 208, and section 1 of Senate Bill No. 2334, chapter 209.

- f. If the local match meets one-third of the total cost of the contract, local communities may decide if the land is open to nonresidents during normally closed times.
2. The community shall offer additional incentive payments based on the community's negotiations with potential landowner cooperators to attract and influence additional interest and signups in areas selected by the community.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the game and fish department for the purpose of entering leases with private landowners to provide access for hunting purposes, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 211

HOUSE BILL NO. 1395

(Representatives Hanson, Mueller, Nelson, Porter)

GAME AND FISH ADVISORY BOARD COMPENSATION

AN ACT to amend and reenact section 20.1-02-24 of the North Dakota Century Code, relating to compensation of the members of the state game and fish advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-24 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-24. Compensation. Each member of the advisory board is entitled to be paid a per diem of ~~forty~~ sixty-two dollars and fifty cents for each day of service in going to, attending, and returning from the meetings required by section 20.1-02-25 to be held in that person's respective district and the meetings of the advisory board. Each member is entitled to be reimbursed for necessary and actual expenses at the rates and in the manner provided by law for other state officers. The compensation and expenses must be paid out of department appropriations.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 212

HOUSE BILL NO. 1062

(Representatives Porter, DeKrey, Carlson, Norland)
(Senators Cook, Dever)

DEERPROOF HAY YARD PROGRAM PARTICIPATION

AN ACT to amend and reenact section 20.1-02-28 of the North Dakota Century Code, relating to eligibility to participate in the deerproof hay yard program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-28 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-28. Deerproof hay yard program. Within legislative appropriations, the director shall provide for a deerproof hay yard program. The deerproof hay yard program must provide materials and supplies at no cost to landowners for the establishment of deerproof hay yards to protect hay or feed on private property with deer depredation problems. ~~The director may not discriminate against or penalize any landowner applying for or participating in the deerproof hay yard program on the basis of that~~ A landowner allowing who allows commercial hunting for big game on a majority of acres owned and operated in exchange for compensation and who posts a majority of the acres owned and operated by that person to prohibit big game hunting is not eligible to participate in the deerproof hay yard program. The department shall establish a prorated repayment system over a three-year period.

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 213

HOUSE BILL NO. 1100

(Natural Resources Committee)

(At the request of the Game and Fish Department)

GAME AND FISH RECORD PROTECTION

AN ACT to provide for protection of game and fish department records of personal information obtained from the public and records of sensitive biological data.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of personal information of the public. The following records, regardless of form or characteristic, of or relating to the game and fish department are exempt under section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:

1. A record that would identify the name, address, or electronic mail address of an individual participating in a wildlife harvest survey.
2. A record that would identify population distributions or locations of pallid sturgeon, bighorn sheep, moose, elk, eagles, sage grouse, prairie chickens, and any species of wildlife listed as threatened or endangered under the federal Endangered Species Act of 1973 [Pub. L. 93-205; 87 Stat. 884; 16 U.S.C. 1531 et seq.], as amended.
3. Telemetry radio frequencies or global positioning system coordinates of monitored species, denning sites, nest locations of raptors, and the specific location of wildlife capture sites used for wildlife research or management.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 214

SENATE BILL NO. 2367

(Senators Krauter, Andrist, Lyson, Wardner)
(Representatives Gulleeson, Nelson)

NONRESIDENT SMALL GAME HUNTING LICENSES

AN ACT to amend and reenact subsection 1 of section 20.1-03-07 of the North Dakota Century Code, relating to nonresident small game hunting licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ **SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Hunt, catch, take, or kill any small game without a nonresident small game license. The nonresident small game license entitles the nonresident to hunt small game for any period of ~~ten~~ fourteen consecutive days or any two periods of ~~five~~ seven consecutive days each. The hunting period for which the license is valid must be designated on the license. A nonresident small game license is not required to hunt waterfowl under section 20.1-03-07.1. A nonresident may purchase more than one nonresident small game license per year.

Approved March 21, 2005
Filed March 21, 2005

¹²⁷ Section 20.1-03-07 was also amended by section 1 of House Bill No. 1402, chapter 222.

CHAPTER 215

SENATE BILL NO. 2256

(Senators Klein, Erbele, O'Connell)
(Representatives DeKrey, Devlin, Weisz)

NONRESIDENT WATERFOWL HUNTING LICENSES AND FEES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to nonresident waterfowl hunting license fees; and to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to nonresident waterfowl hunting licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁸ **SECTION 1. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. (Effective through December 31, 2007) Nonresident waterfowl hunting license required. Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. The Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license must be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year. The fourteen-day, seven-day, and two 7-day hunting period restrictions do not apply to nonresidents hunting in Richland and Sargent Counties during the early September Canada goose season.

(Effective after December 31, 2007) Nonresident waterfowl hunting license required. Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. The Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two

¹²⁸ Section 20.1-03-07.1 was also amended by section 1 of Senate Bill No. 2220, chapter 216.

7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license, must be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

¹²⁹ **SECTION 2.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

For a statewide nonresident waterfowl hunting license, one hundred twenty-five dollars.

Approved April 18, 2005
Filed April 20, 2005

¹²⁹ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

CHAPTER 216

SENATE BILL NO. 2220 (Senator Fairfield)

NONRESIDENT CRANE HUNTING

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to crane hunting by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁰ **SECTION 1. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. (Effective through December 31, 2007) Nonresident waterfowl hunting license required. Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year. The fourteen-day, seven-day, and two 7-day hunting period restrictions do not apply to nonresidents hunting in Richland and Sargent Counties during the early September Canada goose season.

(Effective after December 31, 2007) Nonresident waterfowl hunting license required. Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the

¹³⁰ Section 20.1-03-07.1 was also amended by section 1 of Senate Bill No. 2256, chapter 215.

manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 217

SENATE BILL NO. 2369

(Senators Heitkamp, Lyson, Tollefson)
(Representatives Amerman, Nelson, Wall)

NONRESIDENT FISHING LICENSES AND FEES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to nonresident fishing license fees; and to amend and reenact section 20.1-03-10 of the North Dakota Century Code, relating to nonresident fishing licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-10. Contents of nonresident general game, fishing, or reciprocal trapping licenses - Licenses not transferable - Nonresident short-term fishing license. A nonresident general game, fishing, or reciprocal trapping license is not transferable. Each license must:

1. Describe the licensee.
2. Designate the licensee's place of residence.
3. Have printed upon it in large figures the year for which it is issued.
4. Have printed upon it in large letters the words "nonresident license" and "nontransferable".
5. Have connected to it detachable shipping tags as the director may deem advisable.
6. Be issued in the name of the director.

In addition to the regular nonresident fishing license, a nonresident short-term fishing ~~license~~ licenses may be issued. ~~This license is~~ These licenses are valid up to ~~seven~~ ten days from the date of issue.

¹³¹ **SECTION 2.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

¹³¹ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2294, chapter 224.

For a nonresident short-term ten-day fishing license, twenty-five dollars.

Approved March 21, 2005

Filed March 21, 2005

CHAPTER 218

HOUSE BILL NO. 1238

(Representatives Porter, Kempenich, Nelson, Norland)
(Senators Heitkamp, Lyson)

GRATIS AND PREFERENTIAL DEER LICENSES

AN ACT to amend and reenact subsection 3 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:

¹³² **SECTION 1. AMENDMENT.** Subsection 3 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~A resident who~~ An individual who is a resident, corporation, limited liability company, limited liability partnership, limited partnership, or partnership that has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and ~~who that~~ actively farms or ranches that land or a person who an individual, corporation, limited liability company, limited liability partnership, limited partnership, or partnership that 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 entity is a nonresident upon payment of the fee requirement for a nonresident big game license, upon filing a signed application describing that land. If the license is issued to a corporation, limited liability company, limited liability partnership, limited partnership, or partnership, only one license may be issued and the license must be issued in the name of an individual shareholder, member, or partner. 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 completed application and may be used to hunt deer only upon that land. A license issued under this subsection is valid for the deer bow, deer gun, and muzzleloader seasons until filled. However, a person an individual, that person's individual's spouse, and their children who have a license issued under this subsection may hunt together on land described in any of the affidavits making them eligible for the license. Family members hunting together under this provision shall hunt within the same unit within which the land described in the affidavit making them eligible for the license is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. A person An individual 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 that person individual, but no more than one license may be issued under this subsection for any qualifying land. A person An individual

¹³² Section 20.1-03-11 was also amended by section 1 of House Bill No. 1193, chapter 219, and section 1 of House Bill No. 1366, chapter 220.

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.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 219

HOUSE BILL NO. 1193

(Representatives Drovdal, Porter)
(Senators Fischer, Lyson, Urlacher)

ELK PREFERENTIAL LANDOWNER 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 preferential landowner licenses to hunt elk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³³ **SECTION 1. AMENDMENT.** Subsection 7 of section 20.1-03-11 of 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 a signed application 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 completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application 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 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 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, 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

¹³³ Section 20.1-03-11 was also amended by section 1 of House Bill No. 1238, chapter 218, and section 1 of House Bill No. 1366, chapter 220.

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 raffle under section 20.1-08-04.6~~ participate in a weighted lottery with other landowners who have received licenses under this section. The director shall issue any licenses not issued to an individual who has not previously received a license under this section to individuals who have received a license under this section in a weighted lottery giving preference each year to those individuals who have not received a second license. ~~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 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 completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application. 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 raffle under section 20.1-08-04.6.

¹³⁴ **SECTION 2. AMENDMENT.** Section 20.1-08-04.6 of the North Dakota Century Code is amended and reenacted as follows:

¹³⁴ Section 20.1-08-04.6 was also amended by section 4 of House Bill No. 1366, chapter 220, and section 1 of House Bill No. 1419, chapter 226.

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 and the North American wildlife enforcement memorial museum and educational center a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and fifty percent of all net proceeds must be used for elk management or other wildlife and conservation-related projects in North Dakota as described under rocky mountain elk foundation policies and objectives and all remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires. Except for landowners who receive a license under subsection 7 of section 20.1-03-11 and landowners who receive special elk depredation management licenses issued to landowners under 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 in a lifetime.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 220

HOUSE BILL NO. 1366

(Representatives Hunsakor, DeKrey, Hanson, Nelson)
(Senators Fischer, Tollefson)

LICENSE DENIAL FOR PREVIOUS VIOLATIONS

AN ACT to amend and reenact subsections 7 and 8 of section 20.1-03-11 and sections 20.1-08-04.1, 20.1-08-04.2, and 20.1-08-04.6 of the North Dakota Century Code, relating to limitations for individuals convicted of certain big game hunting violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁵ **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 20.1-03-11 of the North Dakota Century Code are 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 a signed application 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 completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application 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 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 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, range ninety-six west; township one hundred forty-six north, range ninety-seven west; township one hundred

¹³⁵ Section 20.1-03-11 was also amended by section 1 of House Bill No. 1193, chapter 219, and section 1 of House Bill No. 1238, chapter 218.

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 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 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 completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application. 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 raffle under section 20.1-08-04.6. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.

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 a signed application 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 completed application and may be used to hunt moose only upon that land. Upon request, a lessee shall provide proof that the land described in the completed application 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 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 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 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 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 completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application. 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 completed application 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. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.

SECTION 2. AMENDMENT. Section 20.1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.1. Governor's proclamation concerning the hunting of bighorn sheep - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt bighorn sheep in such manner, number, places, and times as the governor prescribes. Licenses to hunt bighorn sheep must be issued by lottery; however, the governor may by proclamation auction to the highest bidder, whether resident or nonresident, a license to hunt bighorn sheep in such manner, number, places, and times as the governor prescribes. Upon payment of the nonrefundable application fee required by section 20.1-03-12.2, a nonresident may participate in the lottery. One license to hunt bighorn sheep may be issued to a nonresident participating in the lottery. If a nonresident is issued a license to hunt bighorn sheep, no other nonresident may be issued a license to hunt bighorn sheep through the lottery. If all of the licenses to hunt bighorn sheep made

available through the lottery are issued to residents, then a nonresident is not eligible to be issued a license to hunt bighorn sheep through the lottery. Each person who has received a license to hunt bighorn sheep is not eligible to apply for another bighorn sheep license. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

SECTION 3. AMENDMENT. Section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.2. Governor's proclamation concerning the hunting of moose

- 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 American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation one license per year to hunt moose in a manner, places, and times as the governor prescribes. The North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation 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. Fifty percent of all net proceeds must be used for elk management or other wildlife and in conservation-related projects in this state as described under rocky mountain elk foundation policies and objectives. All remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall submit reports concerning the raffle as the director requires. A person may only receive one license to hunt moose issued by lottery in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

¹³⁶ **SECTION 4. 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 and the North American wildlife enforcement memorial museum and educational center a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the

¹³⁶ Section 20.1-08-04.6 was also amended by section 2 of House Bill No. 1193, chapter 219, and section 1 of House Bill No. 1419, chapter 226.

raffle and fifty percent of all net proceeds must be used for elk management or other wildlife and conservation-related projects in North Dakota as described under rocky mountain elk foundation policies and objectives and all remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires. Except for landowners who receive special elk depredation management licenses issued to landowners under 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 in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 221

HOUSE BILL NO. 1276

(Representatives Porter, S. Kelsh)

(Senators Freborg, Wardner)

GUIDES AND OUTFITTERS LICENSING AND QUALIFICATIONS

AN ACT to create and enact two new sections to chapter 20.1-03 of the North Dakota Century Code, relating to powers of the game and fish director and guiding on prohibited lands; to amend and reenact subsection 25 of section 20.1-01-02 and sections 20.1-03-37, 20.1-03-38, 20.1-03-39, and 20.1-03-40 of the North Dakota Century Code, relating to licensing and qualifications of guides and outfitters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁷ **SECTION 1. AMENDMENT.** Subsection 25 of section 20.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

25. "Outfitter" means ~~an individual who, while engaging in any of the acts enumerated in this subsection in any manner, advises or otherwise a~~ person that holds the individual's person's business operation out to the public for hire or consideration; provides facilities or services for consideration; or maintains, leases, or otherwise provides compensation for the use of land and which receives compensation from a third party for use of that land; or otherwise uses equipment or accommodations for consideration for the conduct of outdoor recreational activities, including hunting animals or birds and fishing on lakes, reservoirs, rivers, and streams. An outfitter may act as a guide. The term does not include a person holding title or an equitable interest in business operations if the primary purpose of the business operation is to provide food or lodging to the general public, chamber of commerce activities, travel agencies, or others that offer free information to attract outdoor and recreational use of their communities.

SECTION 2. Two new sections to chapter 20.1-03 of the North Dakota Century Code are created and enacted as follows:

Director's powers for immediate suspension. If the director determines by clear and convincing evidence that a substantial violation of state or federal criminal hunting, fishing, or trapping laws of this chapter by a guide or outfitter has occurred, the director may suspend, revoke, or deny a guide or outfitter license to the person violating the laws or provisions. In such a case, a hearing must be held within ten days of the director's intended action and the person must be given notice of the hearing. The person may waive the hearing after having been notified of the

¹³⁷ Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2041, chapter 204, section 1 of Senate Bill No. 2100, chapter 205, and section 1 of Senate Bill No. 2338, chapter 229.

person's right to a hearing, in which case the action of the director takes effect upon signing the waiver. The director may serve notice of the hearing by publication if reasonable efforts to make personal service have failed.

Guiding on prohibited lands. A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing, there is a presumption that the permission did not exist.

SECTION 3. AMENDMENT. Section 20.1-03-37 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-37. Guides and outfitters license qualifications.

1. An individual who is eighteen years of age or more may apply for a guide or outfitter license.
2. An applicant for a hunting guide license and an outfitter acting as a guide shall provide the director proof that the individual is certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent.
3. An applicant for a hunting outfitter or fishing outfitter license shall provide to the director proof that the individual and the individual's business operation are covered by general liability insurance against loss or expense due to accident or injury from outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per accident.
4. An individual must hold a hunting guide license for two years to be eligible to apply for a hunting outfitter license unless that individual provides proof to the department that the individual has been exempt under subsection 4 of section 20.1-03-36.1 and has been conducting outfitter or guide service as an exempt individual for at least two years.
5. The director may not issue a license to an individual who has been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation. As used in this chapter, "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of a sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt which is reversed on appeal.
6. If an application is for a business association, the applicant must be an agent of the association to be held personally responsible for the conduct of the licensed outfitter's operations, in addition to the association, and the applicant must be actively and regularly employed

in and responsible for the management, supervision, and operation of the outfitting business. The department may only issue an outfitter license to a business applicant if the applicant is qualified to conduct the business of outfitting. A corporation or association may qualify for an outfitter license if a majority of stock is owned by licensed outfitters in good standing or landowners who own agricultural land used for the outfitting business, or if a limited liability company, the majority membership interest is owned by licensed outfitters in good standing or by landowners who own agricultural land used for the outfitting business. If a business entity owns, is a leaseholder in land, or provides compensation for the use of land, and directly or indirectly receives remuneration from hunting on that land, the business entity must be licensed under this title unless exempt under subsection 4 of section 20.1-03-36.1. A business entity may not conduct business operations through a subsidiary, contractor, or an agent that would permit the business entity to avoid this chapter. This section does not authorize any act or transaction prohibited by any other law of this state.

7. An applicant for a hunting guide or hunting outfitter license must have legally hunted in this state for part of each of any three years in a manner directly contributing to the individual's experience and competency as a guide. The department may waive this requirement if the applicant proves that the applicant has legally hunted for parts of at least three years in other states and an outfitter employing that individual would suffer an undue hardship without that individual.

SECTION 4. AMENDMENT. Section 20.1-03-38 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-38. Licensing guides and outfitters by the department - Rules - Inspections.

1. The director may license guides and outfitters and may adopt rules to regulate guides and outfitters. If the director requests a trade secret or proprietary information, the director shall request the information on a separate form, and that information is confidential and is not a public record subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The director may release this information, however, if it is aggregated so as not to identify any guide, outfitter, or client. Before engaging in rulemaking activities with respect to guides and outfitters, the director shall appoint a committee composed of guides, outfitters, and interested individuals and shall consult with the committee when preparing rules.
2. The director shall periodically inspect or cause to be inspected all outfitter businesses. All records, facilities, and equipment kept or used by the outfitter are open to inspection by the director or a game warden. Records may not be deceptive and must be kept in a manner and location that is readily accessible to the director or a game warden during normal business hours.
3. The director shall perform a background search for criminal and game and fish violations on each applicant on initial application and on each renewal.

4. The director may not issue a license to an individual to be a hunting guide or hunting outfitter unless the individual is proficient in the application of state and federal laws on the hunting of wild game. The director shall create and administer a written examination to test proficiency of hunting guides and outfitters in these laws. The director shall administer examinations at least twice a year; however, an examination may not be given within ninety days after the previous examination.

SECTION 5. AMENDMENT. Section 20.1-03-39 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-39. Guides and outfitters restrictions - Administrative sanctions.

1. The license of a guide or outfitter may be denied, revoked, or suspended, or placed on probation by the director if:
 - a. The licensee, while carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry;
 - b. The licensee willfully and substantially misrepresented that person's facilities, prices, equipment, services, or hunting or fishing opportunities as a guide or outfitter;
 - c. The licensee has been convicted of an offense not listed in subsection 2 this section which is determined by the director to have a direct bearing on the licensee's ability to serve the public as a guide or outfitter;
 - d. The licensee is addicted to the use of intoxicating liquors, narcotics, or stimulants to the extent the licensee's performance of professional duties is affected; ~~or~~
 - e. The licensee has become not qualified, or has violated any rule for the licensing of a guide or outfitter by the director;²
2. ~~The license of a guide or outfitter may be revoked if:~~
 - ~~a. f.~~ The licensee is convicted of violating state or federal criminal law pertaining to hunting, fishing, or trapping, or if the director finds by clear and convincing evidence that such a violation has occurred;
 - ~~b.~~ The licensee acted as a hunting guide or hunting outfitter on land owned or private land enrolled by the department for the purposes of hunting or on land for which the department pays in lieu of tax payments; or
 - ~~c. g.~~ The licensee provided guiding or outfitting services to a person that had not obtained the appropriate license for the species sought by that person; or
 - ~~h.~~ A licensed outfitter utilized any unlicensed person to perform outfitter or guide services on behalf of the outfitter. This subsection applies to outfitters regardless of whether the person who

performed the service is otherwise exempt under subsection 4 of section 20.1-03-36.1.

- ~~3.~~ 2. For the purpose of administrative sanctions, an outfitter is liable if a guide ~~intentionally~~ violates a criminal provision of this chapter or a state or federal criminal law pertaining to hunting, fishing, or trapping ~~if the outfitter knowingly aids in the violation or knows of the violation but fails to report the violation to the department within a reasonable time while guiding on behalf of the outfitter.~~ It is an affirmative defense if the outfitter reported the violation to the department or law enforcement when the outfitter discovered the violation or has not had more than two independent violations by a guide working on behalf of the outfitter in the previous three-year period and the outfitter did not aid in or attempt to conceal evidence of the violation. A guide is liable if a client violates a state or federal criminal law pertaining to hunting, fishing, or trapping if the guide knowingly aids in the violation or knows of the violation and the guide or client fail to report the violation to the department within a reasonable time.
4. 3. Notwithstanding chapters 45-11 and 47-25, another person may not use a name, business name, fictitious name, trade name, internet address, world wide web uniform resource identifier, place of business, or telephone number of an outfitter who has been convicted of a violation at least three years from the time of the conviction except on permission from the director after a determination by the director that the new business is significantly separate from the previous business and the new business does not employ, contract with, or receive assistance from any person who has been prohibited from guiding or outfitting.

SECTION 6. AMENDMENT. Section 20.1-03-40 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-40. Penalty. ~~Any individual person providing guide or outfitter services without a license, or while under suspension, revocation, or denial is guilty of a class B A misdemeanor. The court must suspend an individual's hunting, trapping, and fishing privileges for at least one year under section 20.1-01-26 if an individual provided guide or outfitter services without a license, or while under suspension, revocation, or denial, or guided on prohibited lands. Unless otherwise specified, other violations of this chapter are a class B misdemeanor. Each client guided is subject to separate and distinct offenses. In addition to this penalty, the director may initiate civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person. Any individual guiding or outfitting while under suspension, revocation, or denial is guilty of a class A misdemeanor.~~ Any individual who commits for remuneration or compensation an act of fraud involving hunting or fishing or any individual who illegally takes or causes death to fish or wildlife for remuneration or compensation may be prosecuted for theft, fraud, or conspiracy under title 12.1 and is, upon conviction, liable for the higher amount between the actual compensation received or the value of the fish or wildlife illegally taken or killed.

CHAPTER 222

HOUSE BILL NO. 1402

(Representatives Drovdal, DeKrey, S. Meyer)
(Senators Lyson, Urlacher)

WILD TURKEY HUNTING BY NONRESIDENTS

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to nonresident wild turkey permit fees; and to amend and reenact subsection 1 of section 20.1-03-07, subsection 11 of section 20.1-03-12, and section 20.1-04-07 of the North Dakota Century Code, relating to hunting of wild turkeys by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁸ **SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Hunt, catch, take, or kill any small game without a nonresident small game license. The nonresident small game license entitles the nonresident to hunt small game for any period of ten consecutive days or any two periods of five consecutive days each. The hunting period for which the license is valid must be designated on the license. A nonresident small game license is not required to hunt waterfowl under section 20.1-03-07.1 or wild turkeys under section 20.1-04-07. A nonresident may purchase more than one nonresident small game license per year.

¹³⁹ **SECTION 2. AMENDMENT.** Subsection 11 of section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

11. For a resident wild turkey permit, eight dollars.

¹⁴⁰ **SECTION 3.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

¹³⁸ Section 20.1-03-07 was also amended by section 1 of Senate Bill No. 2367, chapter 214.

¹³⁹ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

¹⁴⁰ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

For a nonresident wild turkey permit, eighty dollars.

SECTION 4. AMENDMENT. Section 20.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-07. Governor's proclamation concerning the taking of wild turkeys. The governor may, by proclamation, provide for a permit season to take wild turkeys in manner, number, places, and times deemed in the state's best interests. The governor shall make available to residents and nonresidents any permits remaining after the resident fall drawing.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 223

HOUSE BILL NO. 1137

(Natural Resources Committee)

(At the request of the Game and Fish Department)

BAIT LICENSES

AN ACT to amend and reenact section 20.1-06-14 of the North Dakota Century Code, relating to live bait wholesalers and retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴¹ **SECTION 1. AMENDMENT.** Section 20.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-14. Minnow Live bait wholesalers and retailers - License. The director shall adopt rules to control and supervise the operations of minnow or other live bait wholesalers and retailers. The director shall issue a license to each wholesaler when the wholesaler has complied with the director's rules and has paid the appropriate annual license fee. The director shall also issue a ~~minnow or other live bait retailer's license to any person upon payment of license to each retailer~~ when the retailer has complied with the director's rules and has paid the appropriate license fee. ~~No~~ A person may not take, possess, purchase, transport, or sell minnows or other live bait at wholesale or retail without first obtaining the appropriate license. The director may require each retailer or wholesaler to submit reports as the director may deem necessary.

Approved March 7, 2005

Filed March 8, 2005

¹⁴¹ Section 20.1-06-14 was also amended by section 3 of Senate Bill No. 2294, chapter 224.

CHAPTER 224

SENATE BILL NO. 2294

(Senators Heitkamp, Erbele, Thane)
(Representatives Guleson, Wall, Williams)

BAIT VENDOR LICENSES AND FEES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to license fees for nonresident wholesale bait vendor licenses; to amend and reenact subsections 25 and 45 of section 20.1-03-12 and section 20.1-06-14 of the North Dakota Century Code, relating to the regulation and licensing of wholesale bait vendors; to provide for transition; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴² **SECTION 1. AMENDMENT.** Subsections 25 and 45 of section 20.1-03-12 of the North Dakota Century Code are amended and reenacted as follows:

25. For an annual resident license to sell minnows or other live bait at wholesale, ~~thirty~~ fifty dollars.
45. For an annual class B nonresident license to sell minnows or other live bait at wholesale, two hundred fifty dollars.

¹⁴³ **SECTION 2.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

For an annual class A nonresident license to sell minnows or other live bait at wholesale, five hundred dollars.

¹⁴⁴ **SECTION 3. AMENDMENT.** Section 20.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-14. Minnow bait wholesalers and retailers - License. The director shall adopt rules to control and supervise the operations of minnow or other live bait

¹⁴² Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

¹⁴³ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2290, chapter 227, section 1 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

¹⁴⁴ Section 20.1-06-14 was also amended by section 1 of House Bill No. 1137, chapter 223.

wholesalers. The director shall issue a license to each wholesaler when the wholesaler has complied with the director's rules and has paid the appropriate annual license fee. The director ~~shall~~ also shall issue a minnow or other live bait retailer's license to any person upon payment of the appropriate license fee. ~~No~~ A person may not sell minnows or other live bait at wholesale or retail without first obtaining the appropriate license. The director may ~~deem~~ determine necessary. Licenses for wholesalers issued under this section authorize the following:

1. The annual resident license to sell minnows or other live bait at wholesale entitles the licensee to ten tags to mark bait-trapping equipment. A tag must be affixed to each trap used by the licensee. Upon request, the director shall issue additional tags to a licensee at a cost of five dollars per tag. A licensee may not import or export bait without first obtaining a permit from the director.
2. The annual class B nonresident license to sell minnows or other live bait at wholesale entitles a nonresident to import or export bait. A nonresident holding an annual class B nonresident license to sell minnows or other live bait at wholesale may not trap bait.
3. The annual class A nonresident license to sell minnows or other live bait at wholesale entitles the licensee to ten tags to mark bait-trapping equipment. A tag must be affixed to each trap used by the licensee. Upon request, the director shall issue additional tags to a licensee at a cost of five dollars per tag. The annual class A nonresident license to sell minnows or other live bait at wholesale entitles the licensee to trap in state waters with the permission of the director and permits the import and export of approved bait with the permission of the director. A nonresident may hold a class A license under this section if the nonresident's state of residence provides the same privilege for residents of North Dakota.

SECTION 4. TRANSITION. The department may issue a license under this Act for the remainder of 2005 at a prorated fee.

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

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 225

HOUSE BILL NO. 1102

(Natural Resources Committee)

(At the request of the Game and Fish Department)

DEPREDATING ANIMAL DISPOSITION

AN ACT to amend and reenact section 20.1-07-04 of the North Dakota Century Code, relating to the destruction and disposition of depredating fur-bearing animals; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-04. Depredating fur-bearing animals - Destruction and disposition. A landowner or tenant or that person's agent may catch or kill any wild fur-bearing animal that is committing depredations upon that person's poultry, domestic animals, or crops- ~~A, except a~~ landowner or tenant or that person's agent shall notify and obtain the approval of the director before catching or killing a black bear. ~~Except as provided in this section, a~~ A landowner or tenant or that person's agent may not commercialize in, sell, or ship an animal or the pelt or any part of an animal caught or killed under this section if caught or killed during the closed season. ~~The landowner or tenant or that person's agent may possess a black bear killed under this section.~~ A person catching or killing a black bear or mountain lion under this section shall report the capture or killing to the department within twenty-four hours and the entire animal must be turned over to the department.

SECTION 2. GAME AND FISH DEPARTMENT TO ASSESS STATUS OF MOUNTAIN LIONS - REPORT TO LEGISLATIVE COUNCIL. The game and fish department, in cooperation with tribal authorities, shall assess the status of mountain lions in North Dakota. The department shall report its findings to the legislative council before July 1, 2006.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 226

HOUSE BILL NO. 1419

(Representatives Hunskor, Froseth, D. Johnson)
(Senators Cook, Lyson, O'Connell)

ELK DEPREDATION HUNTING LICENSES

AN ACT to amend and reenact section 20.1-08-04.6 of the North Dakota Century Code, relating to special licenses to take elk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁵ **SECTION 1. 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 may 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 may make available to the rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and fifty percent of all net proceeds must be used for elk management or other wildlife and conservation-related projects in North Dakota as described under rocky mountain elk foundation policies and objectives and all remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires. An owner of farmed elk who is experiencing elk depredation problems may contact the director. Upon investigation, the director may issue special elk depredation management licenses. The governor by proclamation shall establish a procedure to issue elk depredation management licenses in a timely manner. Except for landowners who receive special elk depredation management licenses issued to landowners under 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 in a lifetime.

Approved April 12, 2005
Filed April 13, 2005

¹⁴⁵ Section 20.1-08-04.6 was also amended by section 2 of House Bill No. 1193, chapter 219, and section 4 of House Bill No. 1366, chapter 220.

CHAPTER 227

SENATE BILL NO. 2290

(Senators Heitkamp, Erbele, Tollefson)
(Representatives Amerman, Carlson, Guleson)

PRIVATE SHOOTING PRESERVES

AN ACT to amend and reenact subsection 32 of section 20.1-03-12 and sections 20.1-12-04, 20.1-12-05, and 20.1-12-06 of the North Dakota Century Code, relating to the operation and regulation of private shooting preserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁶ **SECTION 1. AMENDMENT.** Subsection 32 of section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

32. For a shooting preserve operating permit:

- a. ~~One, one hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [250 hectares] or less; or~~
- b. ~~One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [250 hectares]; plus fifty thirty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [250 hectares].~~

SECTION 2. AMENDMENT. Section 20.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-04. Types of game that may be hunted on shooting preserve - Identification of game. Game birds that may be stocked on a shooting preserve and hunted under this chapter must be artificially propagated pheasants, quail, partridges, turkeys, prairie chickens, and any other species allowed by the director. The director shall determine the minimum stock of each species to be hunted and released on the permit area during the shooting preserve season. All game birds propagated, possessed, or released on a shooting preserve must be marked prior to release as prescribed by the director by rule. All mallard ducks released on a shooting preserve must have the right hind toenails clipped before the birds attain the age of four weeks have one front toe or one hind toe on either foot removed back to the first joint, including the nail, before becoming six weeks of age. An antipecking device affixed to the bird before it is six weeks old and worn by the bird until it is at least fifteen weeks old is acceptable in lieu of toe clipping if the antipecking device leaves a permanent, easily identifiable mark through the nares.

¹⁴⁶ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1138, chapter 207, section 2 of House Bill No. 1402, chapter 222, section 3 of House Bill No. 1402, chapter 222, section 2 of Senate Bill No. 2256, chapter 215, section 1 of Senate Bill No. 2294, chapter 224, section 2 of Senate Bill No. 2294, chapter 224, and section 2 of Senate Bill No. 2369, chapter 217.

SECTION 3. 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 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~~ yards [91.44 274.32 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 nine-month period beginning August first and ending 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 4. 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 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. If a wild upland bird of the same species hunted on the shooting preserve is taken accidentally by a client out of the regular hunting season proclaimed by the governor, or is taken by a client not in possession of a proper small game license, the client may keep the bird. At no time following release may a shooting preserve operator allow the number of wild and released birds harvested to exceed one hundred percent of the number of birds that have been released. All birds must be healthy when released. The total percent of harvested wild birds kept by clients may not exceed twenty-five percent of the birds harvested during the season. Other than those wild birds allowed to be retained by a client, the shooting preserve operator shall deliver to the department all wild birds harvested.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 228

SENATE BILL NO. 2141

(Transportation Committee)

(At the request of the Game and Fish Department)

BOATING UNDER THE INFLUENCE

AN ACT to amend and reenact subsection 2 of section 20.1-13-07, section 20.1-13.1-07, subsection 5 of section 20.1-13.1-08, and section 20.1-13.1-09 of the North Dakota Century Code, relating to boating under the influence; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 20.1-13-07 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~No A~~ person may ~~not~~ operate ~~any~~ a motorboat or vessel, or manipulate any water skis, a surfboard, or similar device ~~while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.~~ 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 the test within two hours after the operating of a motorboat or vessel.
 - b. That person is under the influence of intoxicating liquor.
 - 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 operating a motorboat or vessel.
 - 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 operating a motorboat or vessel.

The fact that a 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 predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

SECTION 2. AMENDMENT. Section 20.1-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-07. Administrative sanction for operating motorboat or vessel while having certain drug concentrations.

1. After the receipt of the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 20.1-13.1-08, or if that

hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had probable cause to arrest the person and chemical test results show that the arrested person was operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after operating a motorboat or vessel, the director shall prohibit the person from operating any motorboat or vessel in this state as follows:

4. a. For ninety-one days if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-13-07 or the person has not been prohibited from operating a motorboat or vessel under this chapter.
 2. b. For three hundred sixty-four days if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-13-07 or the person has once been prohibited from operating a motorboat or vessel under this chapter.
 3. c. For two years if the person's record shows that within the five years preceding the date of the arrest, the person has twice been prohibited from operating a motorboat or vessel under this chapter, or for a violation of section 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least two separate arrests.
2. A person who is prohibited from operating a motorboat or a vessel under subdivision a of subsection 1 shall serve the prohibition within the time period between May first and October first. If the person is unable to serve the full prohibition within this time period in a single year, the person shall serve the remaining portion of the prohibition during the same time period in subsequent years.

¹⁴⁷ **SECTION 3. AMENDMENT.** Subsection 5 of section 20.1-13.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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 by issuing to the person a copy of the decision within ten days of the conclusion of the hearing. 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 that the person is prohibited from operating a motorboat or vessel in this state. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing.

SECTION 4. AMENDMENT. Section 20.1-13.1-09 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁷ Section 20.1-13.1-08 was also amended by section 5 of House Bill No. 1088, chapter 195.

20.1-13.1-09. Judicial review. Any person who has been prohibited from operating a motorboat or vessel by the decision of the hearing officer under section 20.1-13.1-08 may appeal within seven days after the date ~~of~~ the hearing officer issued the decision under section 20.1-13.1-08 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-42, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on May 1, 2005.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 229

SENATE BILL NO. 2338

(Senators Traynor, Tollefson, Wardner)
(Representatives Nelson, Porter)

AQUATIC NUISANCE SPECIES CONTROL

AN ACT to create and enact five new subsections to section 20.1-01-02 and a new chapter to title 20.1 of the North Dakota Century Code, relating to prevention and control of aquatic nuisance species; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁸ **SECTION 1.** Five new subsections to section 20.1-01-02 of the North Dakota Century Code are created and enacted as follows:

"Aquatic nuisance species" means any nonindigenous, obligate aquatic species of plant or animal which is injurious to native and desirable aquatic species or which has a negative effect on aquatic habitats, environment, or the economy of the state.

"Introduce" means to place, release, or allow the escape of a nonnative species into a free-living state.

"Native aquatic species" means an animal or plant species that is naturally present and reproducing within this state or which naturally expands from its historic range into this state.

"Nonnative species" means a species that is not a native species.

"Transport" means to cause or attempt to cause a species to be carried or moved into or within the state and includes accepting or receiving the species for transportation or shipment. The term does not include the unintentional transport of a species while on a specific water of the state or to a connected water of the state where the species being transported is already present.

SECTION 2. A new chapter to title 20.1 of the North Dakota Century Code is created and enacted as follows:

Prevention and control of aquatic nuisance species. The director, to prevent and control aquatic nuisance species, shall:

¹⁴⁸ Section 20.1-01-02 was also amended by section 1 of House Bill No. 1276, chapter 221, section 1 of Senate Bill No. 2041, chapter 204, and section 1 of Senate Bill No. 2100, chapter 205.

1. Prepare a statewide management plan for aquatic nuisance species to be approved by the governor.
2. Organize an aquatic nuisance species committee, as provided for in the statewide management plan, composed of the director or the director's designee; representatives of the department of agriculture commissioner, state water commission, parks and recreation department, state department of health, and tourism division; up to five private entities or individuals; and a representative of tribal entities. The director or the director's designee is the chairman of the aquatic nuisance species committee.
3. Develop and adopt the state's list of aquatic nuisance species after consulting with the aquatic nuisance species committee. The list must be updated annually.
4. Provide for a permitting system to import listed aquatic nuisance species into or move those species within the state.
5. Develop rules to prevent the movement of aquatic nuisance species into or within the state.
6. Conduct aquatic nuisance species education and prevention efforts.
7. Provide for the partnership of the federal government, state agencies, and private or public organizations to fund aquatic nuisance species prevention efforts.

Compensation and expenses of appointive members of the aquatic nuisance committee. Each appointive member of the committee is entitled to receive sixty-two dollars and fifty cents compensation per day and to reimbursement for expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the committee or, at the discretion of the member, may receive either per diem compensation or expenses in those amounts while otherwise engaged in official business of the department, including time of travel between home and the place at which the member performs such duties.

Management plan. The statewide management plan must address:

1. Coordinated detection efforts and prevention of illegal introductions;
2. Coordinated dissemination of information concerning aquatic nuisance species among resource management agencies and organizations and impacted entities;
3. A coordinated education and awareness campaign;
4. Coordinated control of selected invasive species of aquatic plants and wild animals on lands and public waters;
5. A reasonable and workable inspection requirement for watercraft and equipment working on waters of the state, including those participating in organized events on the waters of the state;
6. Closure of points of access to infested waters, if the director determines closure is necessary;

7. Maintenance of public access to infested waters which are reasonably free of aquatic nuisance species; and
8. Notice to travelers of the penalties for violation of laws relating to aquatic nuisance species.

Inspection of watercraft. The director shall train and authorize personnel to inspect watercraft and associated equipment, including weed harvesters, for aquatic nuisance species before the watercraft and equipment enter or leave waters of the state during the open water season.

Infested waters - Restricted activities. The director shall designate a water of the state as an infested water if the director determines that the water contains a population of an aquatic nuisance species that may spread to other waters if use of the water and related activities is not regulated to prevent this spread. In determining which waters are infested with a nuisance species, the director shall consider:

1. The extent of a species distribution within the state;
2. The likely means of spread for a species; and
3. Whether rules specific to infested waters containing a specific species will effectively reduce that species' spread.

Prohibited activities. A person may not possess, import, purchase, sell, propagate, transport, or introduce a prohibited aquatic nuisance species except:

1. Under a permit issued by the director;
2. When being transported to the department, or another destination as the director may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
3. When being transported for disposal as part of a harvest or control activity under a permit issued by the director or when being transported as specified by the director;
4. When the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise secured in a sealed container;
5. When being removed from watercraft or equipment, or caught while angling, and immediately returned to the water from which it came; or
6. As the director otherwise may prescribe by rule.

Standard. The director may issue a permit under this chapter only if the director determines that the permitted activity does not pose an unreasonable risk of harm to natural resources or their use in the state. The director may deny, issue with conditions, modify, or revoke a permit issued under this chapter as necessary to ensure that the proposed activity will not pose an unreasonable risk of harm to natural resources or their use in the state.

Seizure. The director may seize or dispose of any specimens of prohibited aquatic nuisance species unlawfully possessed, imported, purchased, sold, propagated, transported, or introduced in this state.

Penalty. A person who violates this chapter is guilty of a class B misdemeanor.

Approved March 25, 2005

Filed March 25, 2005

HEALTH AND SAFETY

CHAPTER 230

SENATE BILL NO. 2189

(Senator Kilzer)
(Representative Porter)

IMMUNIZATION DATA EXCHANGE

AN ACT to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to the exchange of immunization data.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05.3. Immunization data. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another, ~~with the patient's verbal or written consent, limited.~~ Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient, and may be exchanged regardless of the date of the immunization, if the person requesting access to the immunization data provides services to the patient.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 231

SENATE BILL NO. 2112

(Senators Brown, Syverson, J. Lee, Flakoll)
(Representatives Ekstrom, Boehning)

ORGAN DONOR IDENTIFICATION CARDS

AN ACT to amend and reenact sections 23-06.2-01, 23-06.2-02, and 39-06-03.1 of the North Dakota Century Code, relating to identification as an organ donor on nondriver photo identification cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card; a statement attached to or imprinted upon a motor vehicle operator's license; or permit or nondriver photo identification card issued by the department of transportation; a will; or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.
6. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.

10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

SECTION 2. AMENDMENT. Section 23-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
 - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.
 - b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license, or permit or nondriver photo identification card issued by the department of transportation subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license, permit, or identification card does not invalidate the anatomical gift.
 - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated, or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.
4. The donor may amend or revoke an anatomical gift, not made by will, only by:
 - a. A signed statement;
 - b. An oral statement made in the presence of two individuals;
 - c. Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

- d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.
9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

SECTION 3. AMENDMENT. Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.2. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.
2. The name and date of birth on all original applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:
 - a. Birth certificate.

- b. Any other documentary evidence which confirms to the satisfaction of the examining officer the true identity and date of birth of the applicant.
3. The fee is eight dollars. Fees collected pursuant to this section must be paid monthly into the highway fund in the state treasury.
4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card issuable pursuant to this chapter may only be released in accordance with the provisions of section 39-16-03.
5. It is a class B misdemeanor for any person, except the director or the director's authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.
6. The director is hereby authorized to utilize whatever advertising deemed necessary to make the public aware may advertise the availability and the use of the card and its use.
7. Identification cards issued pursuant to this section ~~shall be~~ are sufficient identification ~~whenever~~ for all identification is required purposes.
8. The director shall cancel any card upon determining that the holder is not entitled to the issuance of the card under the laws of this state, or the holder has failed to give the required or correct information to the director, or has committed fraud in making ~~such~~ the application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender ~~such~~ the card to the director. When a cancellation is in effect, any law enforcement officer may take custody of ~~such~~ the card.
9. A duplicate card may be obtained by making an application and paying an eight dollar fee. For a cardholder who has reached the age of eighteen or twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.

Approved March 22, 2005

Filed March 25, 2005

CHAPTER 232

SENATE BILL NO. 2343

(Senators J. Lee, Fischer, Robinson)
(Representatives Gulleason, Price, Svedjan)

HEALTH CARE DIRECTIVES

AN ACT to create and enact a new section to chapter 23-06.5 of the North Dakota Century Code, relating to health care directives; to amend and reenact subsection 2 of section 12.1-31-07 and sections 23-06.5-01, 23-06.5-02, 23-06.5-03, 23-06.5-05, 23-06.5-06, 23-06.5-07, 23-06.5-08, 23-06.5-09, 23-06.5-10, 23-06.5-11, 23-06.5-12, 23-06.5-13, 23-06.5-15, 23-06.5-16, 23-06.5-17, and 23-06.5-18 of the North Dakota Century Code, relating to health care decisions and directives; and to repeal chapter 23-06.4 of the North Dakota Century Code, relating to treatment declarations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

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 B felony.

SECTION 2. AMENDMENT. Section 23-06.5-01 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-01. Statement of purpose. Every competent adult has the right and responsibility to make the decisions relating to the adult's own health care, including the decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to enable adults to retain control over their own medical health care during periods of incapacity through health directives and the prior designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

SECTION 3. AMENDMENT. Section 23-06.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care directive for the individual granting the power.

2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.
4. ~~"Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter.~~
5. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:
 - a. Selection and discharge of health care providers and institutions;
 - b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;
 - c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
 - d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.
5. "Health care directive" means a written instrument that complies with this chapter and includes one or more health care instructions, a power of attorney for health care, or both.
6. "Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.
6. 7. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
7. 8. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.
8. 9. "Principal" means an adult who has executed a ~~durable power of attorney for health care~~ directive.

SECTION 4. AMENDMENT. Section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-03. Scope and duration of authority Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions. Subject to the provisions of this chapter and any express limitations set forth by the principal in the durable power of attorney for health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
 - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the durable power of attorney for health care or in a declaration executed pursuant to chapter 23-06.4 principal's health care directive; or
 - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. Under a durable power of attorney for health care, A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
5. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

SECTION 5. AMENDMENT. Section 23-06.5-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-05. Health care directive requirements - Execution and witnesses. The durable power of attorney for

1. To be legally sufficient in this state, a health care directive must:
 - a. Be in writing;
 - b. Be dated;

- c. State the principal's name;
 - d. Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;
 - e. Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and
 - f. Include a health care instruction or a power of attorney for health care, or both.
2. A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign, the ~~durable power of attorney for health care~~ directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

SECTION 6. A new section to chapter 23-06.5 of the North Dakota Century Code is created and enacted as follows:

Suggested health care directive form. A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;

5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; and
7. Health care instructions regarding artificially administered nutrition or hydration.

SECTION 7. AMENDMENT. Section 23-06.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-06. Acceptance of appointment - Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates a duty authority for the agent to make health care decisions on behalf of the principal at such time as the principal becomes ~~incapable~~ incapacitated. Until the principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the principal. After the principal becomes ~~incapable~~ incapacitated, the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

SECTION 8. AMENDMENT. Section 23-06.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-07. Revocation.

1. A ~~durable power of attorney~~ for health care directive is revoked:
 - a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the ~~power~~ directive; or
 - b. By execution by the principal of a subsequent ~~durable power of attorney~~ for health care directive.
2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a ~~durable power of attorney~~ for health care directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation.
3. ~~If~~ Unless otherwise provided in the health care directive, if the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

SECTION 9. AMENDMENT. Section 23-06.5-08 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-08. Inspection and disclosure of medical information. Subject to any limitations set forth in the ~~durable power of attorney~~ for health care directive by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information; and
3. Consent to the disclosure of such medical information.

SECTION 10. AMENDMENT. Section 23-06.5-09 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-09. Action by Duties of provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's ~~durable power of attorney for health care directive~~, are bound to follow the directives health care decisions of the principal's designated agent or a health care instruction to the extent they are consistent with this chapter and the durable power of attorney for health care directive.
2. ~~If because of a moral or other conflict with a specific directive given by the agent, a~~ A principal's health care or long-term care services provider finds it impossible to follow that directive, the provider has the duty to inform the agent and if possible the principal, and may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.
3. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
4. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care, or alleviation of pain.
5. Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.
6. In the absence of a direction to the contrary contained in a health care directive prepared under this chapter, nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to the principal. Nutrition or hydration, or both, must be withdrawn, withheld, or administered, if the principal for whom the administration of nutrition or hydration is considered, has directed in a

health care directive the principal's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health care directive prepared under this chapter does not indicate the principal's direction with respect to nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the principal or would be physically harmful or would cause unreasonable physical pain to the principal.

SECTION 11. AMENDMENT. Section 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a durable power of attorney for health care directive.
2. A durable power of attorney for health care The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the durable power of attorney for health care appointment to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care the appointment. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.
3. A durable power of attorney for health care The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the durable power of attorney for health care appointment to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care the appointment.

SECTION 12. AMENDMENT. Section 23-06.5-11 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-11. Reciprocity. This chapter does not limit the enforceability of a ~~durable power of attorney for health care directive~~ or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

SECTION 13. AMENDMENT. Section 23-06.5-12 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a ~~durable power of attorney for health care directive~~ or person authorized to provide informed consent ~~pursuant to section 23-12-13~~ may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the ~~terms of the durable power of attorney for health care and the provisions of this chapter or section 23-12-13.~~
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of ~~the durable power of attorney for a health care directive~~, the directives of the patient's agent, ~~and the or other provisions of this chapter or section 23-12-13.~~
3. A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the agent to withhold or withdraw that health care, or a health care provider who withholds health care that the provider has determined to be contrary to reasonable medical standards, despite a health care decision of the agent to provide the health care, may not be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct if that health care provider promptly took all reasonable steps to:
 - a. Notify the agent of the health care provider's unwillingness to comply;
 - b. Document the notification in the principal's medical record; and
 - c. Arrange to transfer care of the principal to another health care provider willing to comply with the decision of the agent.

SECTION 14. AMENDMENT. Section 23-06.5-13 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-13. Guardianship authority - Conflicting declaration Presumptions and application.

1. Unless a court of competent jurisdiction determines otherwise, a ~~durable power of attorney for health care~~ the appointment of an agent in a health care directive executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

2. To the extent a durable power of attorney for health care conflicts with a declaration executed in accordance with chapter 23-06.4 that health care directives conflict, the instrument executed later in time controls.
3. The principal is presumed to have the capacity to execute a health care directive and to revoke a health care directive, absent clear and convincing evidence to the contrary.
4. A health care provider or agent may presume that a health care directive is legally sufficient absent actual knowledge to the contrary. A health care directive is presumed to be properly executed, absent clear and convincing evidence to the contrary.
5. An agent and a health care provider acting pursuant to the direction of an agent are presumed to be acting in good faith, absent clear and convincing evidence to the contrary.
6. A health care directive is presumed to remain in effect until the principal modifies or revokes it, absent clear and convincing evidence to the contrary.
7. This chapter does not create a presumption concerning the intention of an individual who has not executed a health care directive and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a health care directive.
8. A copy of a health care directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and must be given the same effect as an original.
9. Death resulting from the withholding or withdrawal of health care pursuant to a health care directive in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.
10. The making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured principal, notwithstanding any term to the contrary.
11. A person may not prohibit or require the execution of a health care directive as a condition for being insured for, or receiving, health care services.
12. This chapter does not affect the right of a patient to make decisions regarding use of health care, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of health care.
13. Health care directives prepared under this chapter which direct the withholding of health care do not apply to emergency treatment performed in a prehospital situation.

SECTION 15. AMENDMENT. Section 23-06.5-15 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-15. Validity of previously executed durable powers of attorney or other directives. A health care directive executed before the effective date of this Act, which complies with the law in effect at the time it was executed, including former chapter 23-06.4, must be given effect pursuant to this chapter. This chapter does not affect the validity or enforceability of a durable powers power of attorney pertaining to for health care executed before July 17, 1994 the effective date of this Act.

SECTION 16. AMENDMENT. Section 23-06.5-16 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-16. Use of statutory form. The statutory health care directive form of durable power of attorney described in section 23-06.5-17 may be used and is the preferred an optional form, but not a required form, by which a person may execute a durable power of attorney for health care directive pursuant to this chapter. It is known as "the statutory form of durable power of attorney for health care". Another form may be used if it complies with this chapter.

SECTION 17. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. Statutory Optional health care directive form of durable power of attorney. The statutory form of durable power of attorney is as follows following is an optional form of a health care directive and is not a required form:

**STATUTORY FORM DURABLE POWER OF ATTORNEY FOR
HEALTH CARE WARNING TO PERSON
EXECUTING THIS DOCUMENT**

This is an important legal document that is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen years of age for this document to be legally valid and binding.

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision.

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of

your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known; does anything that is clearly contrary to your best interest.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents, if any; or give each of them an executed copy of this document. You should give your doctor an executed copy of this document.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint: _____

(insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of an operator of a long-term care facility) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care.

3. **GENERAL STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 below. You can indicate your desires by including a statement of your desires in the same paragraph.)
4. **STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.** (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

- a. Statement of desires concerning life-prolonging care, treatment, services, and procedures:

- b. Additional statement of desires, special provisions, and limitations regarding health care decisions:

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any

bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

5. **INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.** Subject to any limitations in this document, my agent has the power and authority to do all of the following:

- a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.
- b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.
- c. Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 above.)

6. **SIGNING DOCUMENTS, WAIVERS, AND RELEASES.** Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

- a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".
- b. Any necessary waiver or release from liability required by a hospital or physician.

7. **DURATION.** (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)

This durable power of attorney for health care expires on

(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)

8. **DESIGNATION OF ALTERNATE AGENTS.** (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 4, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 4 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate

and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document; such persons to serve in the order listed below:

a. First Alternate Agent: _____

(Insert name, address, and telephone number of first alternate agent.)

b. Second Alternate Agent: _____

(Insert name, address, and telephone number of second alternate agent.)

HEALTH CARE DIRECTIVE

I _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time
and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative

employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If

my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO
DO
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE
DECISIONS FOR MYSELF
(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

_____ (1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

_____ (2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE (I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE
(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

☐ Any needed organs and tissue.

☐ Only the following organs and tissue: _____

PART IV: MAKING THE DOCUMENT LEGAL

9. PRIOR DESIGNATIONS REVOKED. I revoke any prior ~~durable power of attorney~~ for health care directive.

DATE AND SIGNATURE OF PRINCIPAL (YOU MUST DATE AND SIGN THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE)

I sign my name to this ~~Statutory Health Care~~
~~Directive Form~~ ~~Durable Power of Attorney For Health~~
~~Care~~ on _____ at _____
(date) (city)

(state)

(you sign here)

(THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS ~~POWER OF ATTORNEY~~ HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider

providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box:
[].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness One)

(Address)

Witness Two:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this

document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

40. ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes ~~incapable~~ incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is ~~incapable of making the principal's~~ not able to make health care decisions, I must notify the principal's physician.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this day of , 20 . _____
(Signature of Principal)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY. (Only necessary if person is a resident of long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a

resident of _____ (name and city of facility). I am (check one of the following):

☐ A recognized member of the clergy.

☐ An attorney licensed to practice in North Dakota.

☐ A person designated by the district court for the county in which the above-named facility is located.

☐ A person designated by the North Dakota department of human services.

Dated on _____, 20____: _____ (Signature)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL. (Only necessary if person is a patient in a hospital or is being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a patient or is being admitted as a patient of _____ (name and city of hospital). I am (check one of the following):

☐ An attorney licensed to practice in North Dakota.

☐ A person designated by the hospital to explain the health care directive.

Dated on _____, 20____: _____ (Signature)

SECTION 18. AMENDMENT. Section 23-06.5-18 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-18. Penalties.

1. A person who, without authorization of the principal, willfully alters or forges a ~~power of attorney~~ health care directive or willfully conceals or destroys a revocation with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures which hastens the death of the principal is guilty of a class C felony.
2. A person who, without authorization of the principal, willfully alters, forges, conceals, or destroys a ~~power of attorney~~ health care directive or willfully alters or forges a revocation of a ~~power of attorney~~ health care directive is guilty of a class A misdemeanor.
3. The penalties provided in this section do not preclude application of any other penalties provided by law.

SECTION 19. REPEAL. Chapter 23-06.4 of the North Dakota Century Code is repealed.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 233**HOUSE BILL NO. 1117**

(Human Services Committee)

(At the request of the State Department of Health)

CANCER REGISTRY

AN ACT to amend and reenact section 23-07-01 of the North Dakota Century Code, relating to authority of the state department of health to maintain a cancer registry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07-01. Powers of state State department of health - Collection of public health information. The state department of health shall designate the diseases or conditions that must be reported. Such diseases or conditions may include contagious, infectious, sexually transmitted, or chronic diseases or any illness or injury which may have a significant impact on public health. The state department of health shall maintain a uniform statewide population-based registry system for the collection of data pertaining to the incidence, prevalence, risk factors, management, survival, mortality, and geographic distribution of cancer and reportable benign tumors.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 234

SENATE BILL NO. 2252

(Senators Schobinger, Bowman, Taylor)
(Representatives Iverson, Onstad, Owens)

DISEASE AND HIV EXPOSURE NOTIFICATION AND TESTING

AN ACT to amend and reenact subsection 3 of section 23-07.3-01 and subsections 1 and 9 of section 23-07.5-01 of the North Dakota Century Code, relating to notification of exposure to infectious diseases and to human immunodeficiency virus testing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Exposed individual" means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, laboratory personnel, health care provider as defined in section 23-07.5-01, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.

¹⁴⁹ **SECTION 2. AMENDMENT.** Subsections 1 and 9 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, laboratory personnel, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
9. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

¹⁴⁹ Section 23-07.5-01 was also amended by section 1 of House Bill No. 1410, chapter 235.

- c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 235

HOUSE BILL NO. 1410

(Representatives Grande, Devlin, Kreidt)

(Senator J. Lee)

BLOODBORNE PATHOGEN EXPOSURE TESTING

AN ACT to amend and reenact sections 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, and 23-07.5-07, paragraph 1 of subdivision b of subsection 10 of section 65-01-02, and sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁰ **SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means a ~~human being who had a significant exposure with another individual who is subject to testing and who is a~~ an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. "~~Health care provider~~" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

¹⁵⁰ Section 23-07.5-01 was also amended by section 2 of Senate Bill No. 2252, chapter 234.

3. 4. "Health care services" means any services included in the furnishing to any an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
4. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.
5. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus. "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, body fluid, or tissues.
6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.
7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus. "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred; the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician. "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.
9. "Significant exposure" means:
- a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.
10. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual

rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.

SECTION 2. AMENDMENT. Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing - Exception.

1. Except when testing is otherwise ~~provided for~~ permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject a ~~person~~ an individual who is the source of an exposure to a test for the presence of the human immunodeficiency virus bloodborne pathogens unless the subject of the test, ~~the parent or legal guardian or custodian of the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an~~ is incapacitated ~~person who is the subject of the test, first provides informed consent for testing as provided under subsection 2.~~
2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:
 - a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.
 - b. A statement of explanation that the test results may be disclosed as authorized by law.
 - c. Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.
3. A health care provider or an exposed individual who had a significant exposure with another individual may subject If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
 - a. A blood sample of the individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that

the individual had a significant an exposure. The certification must accompany the request for testing and disclosure.

- e. The test subject is capable of consenting when the test is requested; has been given an opportunity to be tested with consent, and has not consented.
 - e. Before and before testing; the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test subject except for the purpose of having the test performed; and that a record of the test results may be placed kept in the test subject's exposed individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the patient's test subject's identity and that disclosing the this information constitutes a class C felony.
4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.4 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:
- a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - e. The provider or a person rendering aid under chapter 32-03.4 is capable of consenting when the test is requested; has been given an opportunity to be tested with consent, and has not consented.
 - e. Before testing; the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does

not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.

5. 3. If an individual who is the subject of a significant an exposure is ~~unconscious or~~ incapable of giving informed consent for testing under this section, that consent may be obtained ~~in accordance with section 23-12-13~~ from the individual's personal representative. If an individual who is the subject of a significant an exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens, ~~including human immunodeficiency virus, hepatitis B, and hepatitis C~~ infection must be conducted ~~within twenty-four hours~~ as soon as reasonably possible. A ~~licensed physician with expertise in infectious diseases shall make the determination of which tests are required.~~ Results of these tests must be provided to the physician providing care for the individual who experienced the significant exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person~~ deceased individual which are in the facility's control ~~within twenty-four hours~~ as soon as reasonably possible. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the ~~person who died~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased ~~within twenty-four hours~~ individual as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the significant exposure.
6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, 4, or 5 must be conducted in a reasonably expedient manner. ~~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~~ The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing another the individual, patient, or provider with whom the individual had a significant who was the source of an 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 test subject 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 three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an

exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court ~~may~~ shall issue an order requiring testing under this subsection ~~only~~ if:

- a. ~~The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the test subject's blood is not available to be used to test for the human immunodeficiency virus;~~
 - b. The court finds probable cause to believe that the ~~person~~ individual petitioning for the testing had a ~~significant an~~ significant exposure with the test subject;
 - c. ~~b.~~ The petition substitutes a pseudonym for the true name of the test subject;
 - d. ~~c.~~ The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. ~~d.~~ The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court;~~ and
 - f. ~~e.~~ The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.~~
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
8. 6. ~~A health care provider who subjects a patient an individual to a significant an exposure must notify the patient individual of the exposure. A health care provider witnessing a significant an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform a patient an individual of a significant an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.~~
7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer

shall pay the expense of testing unless otherwise provided by subdivision b of subsection 10 of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

SECTION 3. AMENDMENT. Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider; ~~blood bank, blood center, or plasma center that~~ who collects a specimen of body fluids or tissues for the purpose of testing for the presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens caused by an exposure shall:

- 1- ~~Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
- 2- ~~Maintain a record of the consent received under subsection 1-~~
- 3- ~~Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

SECTION 4. AMENDMENT. Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-06. Expanded disclosure of test results prohibited. ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for ~~the human immunodeficiency virus~~ bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as permitted under subsection 3, or as otherwise authorized by law.
3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure is necessary for the health and safety of the other officer and the disclosure is limited to the minimum amount of information needed to protect the health and safety of that officer.

SECTION 5. AMENDMENT. Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-07. Civil liability. ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs

plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

¹⁵¹ **SECTION 6. AMENDMENT.** Paragraph 1 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the ~~bureau~~ organization may pay for preventive treatment for ~~significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3,~~ a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

SECTION 7. 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 ~~an exposure to infectious disease a~~ bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, 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.~~

SECTION 8. AMENDMENT. Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15.1. 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 ~~an exposure to infectious disease a~~ bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, 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

¹⁵¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1120, chapter 610, and section 1 of House Bill No. 1171, chapter 611.

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 9. REPEAL. Chapter 23-07.3 of the North Dakota Century Code is repealed.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 236

HOUSE BILL NO. 1190

(Representatives Devlin, Kreidt, Metcalf)
(Senators Fischer, J. Lee, Robinson)

BASIC CARE BED MORATORIUM

AN ACT to amend and reenact section 23-09.3-01.1 of the North Dakota Century Code, relating to a moratorium on the expansion of basic care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

23-09.3-01.1. Moratorium on expansion of basic care bed capacity.

1. Except when a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia pilot projects established under section 50-06-14.4 requests licensure of the facility's existing beds as basic care bed capacity, or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department 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, 2003; Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, 2003 2005, and July 31, 2007, except when:
 - a. A nursing facility converts nursing facility beds to basic care; or
 - b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months.
2. Transfers of existing basic care beds from one municipality basic care facility to another municipality must be approved if the licensing requirements are met, during the period August 1, 2003, to July 31, 2007. Existing licensed entity is permitted. Transferred basic care beds released by a facility and transferred to another facility must become licensed within forty-eight months of transfer. The entity receiving the transferred beds or any new facility may seek to participate in the basic care assistance program. If the entity can demonstrate that individuals can be cared for at a more independent level and that this service will delay entry into the nursing facility, the entity may be approved for basic care assistance funds.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2003, to July 31, 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed

~~capacity by an amount equal to the number of beds transferred. If an Indian tribe acquires basic care beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate, within forty-eight months of any transfer of beds, in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.~~

4. ~~Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of the facility's intent to convert bed capacity.~~

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 237

SENATE BILL NO. 2227

(Senators Erbele, Heitkamp, Wardner)
(Representatives Brandenburg, Guleson, Kretschmar)

HOUSING AUTHORITY JURISDICTION

AN ACT to amend and reenact sections 23-11-01, 23-11-03, 23-11-11, 23-11-14, 23-11-20, 23-11-21, 23-11-23, 23-11-24, and 23-11-29 of the North Dakota Century Code, relating to housing authority jurisdiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-01 of the North Dakota Century Code is amended and reenacted as follows:

23-11-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Area of operation" includes:
 - a. In the case of a housing authority of a city having a population of less than fifteen thousand inhabitants, ~~such the~~ city and the area within five miles [8.05 kilometers] of the territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
 - b. In the case of a housing authority of a city having a population of fifteen thousand inhabitants or more, ~~such the~~ city and an area within ten miles [16.10 kilometers] of ~~such the~~ territorial boundaries ~~thereof of the city~~, but does not include any area ~~which lies that is~~ within the territorial boundaries of another city.
 - c. In the case of a housing authority of a county, all of the county except that portion ~~which lies that is~~ within the territorial boundaries of any city.
2. "Auditor" means the city auditor or the county auditor, as ~~the case may be appropriate~~.
3. "Authority" or "housing authority" means any of the public corporations created by section 23-11-02.
4. "Bonds" means any bonds, notes, certificates, debentures, or other obligations issued by an authority ~~pursuant to any provision of~~ under this chapter.
5. "City" means any city having a population of more than five thousand inhabitants according to the last federal census and "the city" means the particular city for which a particular housing authority is created, except that it does not mean a city ~~which that~~ has agreed to or will so elect to participate in a county housing authority pursuant to section 54-40-08, provided that any city with less than five thousand population which has

an activated city housing authority prior to July 1, 1971, or a city with less than five thousand population which has determined a shortage of safe or sanitary dwelling accommodations in the city pursuant to section 23-11-03, must be included within this definition.

6. "County" means any county in this state and "the county" means the particular county for which a particular housing authority is created.
7. "Federal government" includes the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.
8. "Governing body" means, in the case of a city, the city council, or the board of city commissioners, ~~as the case may be appropriate~~, and in the case of a county, the board of county commissioners.
9. "Housing project" may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection ~~therewith~~ with the same and means any work or undertaking:
 - a. To demolish, clear, or remove buildings from any slum area, and ~~such~~ the work or undertaking may embrace the adaption of ~~such~~ the area to public purposes, including parks or other recreational or community purposes;
 - b. To provide or assist in providing decent, safe, and sanitary urban or rural housing dwellings, apartments, or other living accommodations and related facilities for persons of low or moderate income; ~~and in need of housing, including single-family and multifamily residential units designed and financed under this chapter. This work or undertaking may include the planning of buildings and improvements, land, equipment, facilities, and other the acquisition of real or personal property that may be needed immediately or in the future for housing purposes, the construction, reconstruction, alteration and repair of new or existing buildings, and the provisions of all equipment, facilities, and other real or personal property~~ for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparations, landscaping, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or
 - c. To accomplish a combination of any of the foregoing projects.
10. "Mayor" means the mayor of the city or the president of the board of city commissioners, ~~as the case may be appropriate~~.
11. "Obligee of the authority" or "obligee" includes any bondholder, trustee for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee of ~~such~~ a lessor's interest, or of any part ~~thereof~~ of an interest, and the federal government when it is a party to any contract with the authority.
12. "Persons of low income" means ~~persons~~ individuals or families who lack the amount of income which is necessary, as determined by the

authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

13. "Persons of moderate income" means individuals or families whose income is not adequate without governmental assistance to cause private enterprise to provide a substantial supply of decent, safe, and sanitary housing at rents or prices within their financial means.
14. "Real property" includes all lands and land, including improvements and fixtures thereon on the land and property of any nature appurtenant thereto to the land or used in connection therewith with the land, and every estate, interest, and right, legal or equitable, therein in the land, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such the liens.
44. 15. "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or by reason of any combination of these factors, are detrimental to safety, health, and morals.

SECTION 2. AMENDMENT. Section 23-11-03 of the North Dakota Century Code is amended and reenacted as follows:

23-11-03. When resolution declaring housing authority to be necessary shall be adopted.

1. The governing body of the city or county, as ~~the case may be~~ appropriate, shall adopt a resolution declaring that there is need for a housing authority in the city or county if ~~# the governing body finds:~~
4. ~~That that~~ that unsanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
2. ~~That that~~ that there is a shortage of safe or sanitary dwelling accommodations in ~~such~~ the city or county available to persons of low or moderate income at rentals they can afford to pay.
2. In determining whether dwelling accommodations are unsafe or unsanitary, ~~said~~ the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of ~~such the~~ the dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions which endanger life or property by fire or other causes exist in ~~such the~~ the buildings.

SECTION 3. AMENDMENT. Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

23-11-11. Powers of authority. An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.

3. ~~Repealed by S.L. 1973, ch. 80, § 24.~~
4. To have perpetual succession.
5. 4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
6. 5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with ~~the provisions of~~ this chapter, as are necessary to carry into effect the powers and purposes of the authority.
7. 6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
8. 7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part ~~thereof of a housing project~~, within ~~its~~ the authority's area of operation.
9. 8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants ~~thereof of a housing project~~.
10. 9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor ~~shall~~ comply with requirements as to minimum wages and maximum hours of labor and any conditions ~~which that~~ the federal government may have attached to ~~its the~~ the financial aid ~~of for~~ for the project.
11. 10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges ~~therefor in the housing project~~.
12. 11. To own, hold, and improve ~~real or personal~~ property.
13. 12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any ~~real or personal~~ property or any interest ~~therein in property~~.
14. 13. To acquire real property by the exercise of the power of eminent domain.
15. 14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any ~~real or personal~~ property, or any interest ~~therein in property~~.
16. 15. To insure, or provide for the insurance of, any ~~real or personal~~ property, or any operation of the authority, against any risks or hazards.
17. 16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts ~~thereof of debts~~, secured by mortgages on any property included in any of ~~its the~~ the authority's housing projects, whether the debts were incurred by the authority or not.
18. 17. To invest any funds held by ~~it the authority~~ in reserves or sinking funds, or any funds not required for immediate disbursement, in property or

securities in which savings banks may legally invest funds subject to ~~their~~ a savings bank's control.

- ~~19.~~ 18. To purchase its bonds at a price not more than the principal amount ~~thereof of the bonds~~ and accrued interest, ~~and all bonds a bond~~ so purchased ~~shall be~~ is canceled.
- ~~20.~~ 19. To investigate, in ~~its~~ the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
- ~~21.~~ 20. To determine, within ~~its~~ the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
- ~~22.~~ 21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within ~~its~~ the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision ~~thereof~~, in any action taken in connection with ~~such~~ these problems.
- ~~23.~~ 22. To engage in research, studies, and experimentation on the subject of housing within ~~its~~ the authority's area of operation.
- ~~24.~~ 23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for ~~its~~ the authority's information.
- ~~25.~~ 24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
- ~~26.~~ 25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within ~~its~~ the authority's area of operation, ~~its~~ the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
- ~~27.~~ 26. To issue bonds from time to time for any of its corporate purposes.
- ~~28.~~ 27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by ~~it~~ the authority.
- ~~29.~~ 28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within ~~its~~ the authority's area of operation.
- ~~30.~~ 29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.

34. 30. To comply with ~~such~~ conditions and to enter into ~~such~~ mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out ~~the provisions of this subsection and the preceding subsection~~ section.
32. 31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
33. 32. To exercise all or any part or combination of powers ~~herein~~ granted.
34. 33. To exercise within ~~its~~ the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
35. 37. To exercise ~~such~~ other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections ~~24~~ 23, ~~25~~ 24, and ~~26~~ 25, may act through one or more of the commissioners or through other persons designated by ~~it~~ the authority. ~~No provision~~ Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies ~~is~~ are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter 48-01.1.

SECTION 4. AMENDMENT. Section 23-11-14 of the North Dakota Century Code is amended and reenacted as follows:

23-11-14. Rentals and tenant selection. In the operation or management of housing projects, an authority at all times shall observe the following duties with respect to rentals and tenant selection:

1. ~~# The authority may rent or lease the dwelling accommodations therein only in the project solely to persons of low or moderate income.~~
2. ~~# The authority may rent or lease the dwelling accommodations therein only in the project solely at rentals within the financial reach of such persons of low or moderate income.~~
3. ~~# The authority may rent or lease to a tenant dwelling accommodations consisting only solely of the number of rooms which it deems the authority determines necessary to provide safe and sanitary~~

accommodations to the proposed occupants ~~thereof~~, without overcrowding.

4. ~~§~~ The authority may not accept ~~any person~~ persons of low income as a tenant in any housing project if the ~~person individual or persons family~~ who would occupy the dwelling accommodations ~~have has~~ an aggregate annual income in excess of five times the annual rental of the quarters to be furnished ~~such person the individual or persons family~~. In computing the rental for this purpose, there must be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, cooking, and other necessary services or facilities, whether ~~or not~~ the charge for ~~such the~~ services and facilities is in fact included in the rental.
5. ~~§~~ The authority shall prohibit subletting by tenants.

SECTION 5. AMENDMENT. Section 23-11-20 of the North Dakota Century Code is amended and reenacted as follows:

23-11-20. Bonds - Types which may be issued.

1. An authority may issue ~~such types any type of bonds bond~~ as it ~~may determine~~ the authority determines necessary for the purpose of financing housing for persons of low or moderate income, including bonds a bond on which the interest and principal are payable:
 4. a. Exclusively from the income and revenues of the housing project financed with the proceeds of ~~such bonds the bond~~ or with ~~such the~~ proceeds together with a grant from the federal government in aid of ~~such the~~ project;
 2. b. Exclusively from the income and revenues of certain designated housing projects whether ~~or not they~~ the projects are financed in whole or in part with the proceeds of ~~such bonds the bond~~; or
 3. c. From ~~its the~~ authority's revenues generally.
2. The bonds and other obligations of the authority are not payable out of any funds or properties other than those of the authority. ~~Any of such~~ These bonds, however, may be secured additionally by a pledge of any loan, grant, or contribution, or part of the same, from the federal government or other source of a pledge of any income or revenues or by a mortgage on any housing project, projects, or other property of the authority.

SECTION 6. AMENDMENT. Section 23-11-21 of the North Dakota Century Code is amended and reenacted as follows:

23-11-21. Bonds - Liability - Tax exempt. Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally ~~thereon~~ on the bonds by reason of the issuance ~~thereof of the bonds~~, nor is any city, county, or state, or political subdivision ~~thereof~~, liable ~~thereon on the bonds~~. The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision ~~thereof~~, and must so state on their the face of the bond. ~~They~~ The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. ~~Such~~ The bond obligations

are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and the bonds, together with the interest ~~thereon~~ on the bonds and income ~~therefrom~~, from the bonds are exempt from taxation. The tax exemption provisions of this chapter are considered part of the contract for the security of the bond obligations authorized by this chapter and do not need to be restated in the bond obligations.

SECTION 7. AMENDMENT. Section 23-11-23 of the North Dakota Century Code is amended and reenacted as follows:

23-11-23. Bonds - Validity when officer who signs bond is no longer in office - Deemed issued for housing project. If any of the commissioners or officers of an authority whose signatures appear on any bonds or coupons cease to be ~~such commissioners~~ a commissioner or officers officer before the delivery of the bonds, the signatures are valid and sufficient for all purposes the same as if the ~~commissioners commissioner or officers officer~~ had remained in office until the delivery had been completed. Any bonds issued ~~pursuant to the provisions of the~~ under this chapter must be fully negotiable. In an action, suit, or proceeding involving the validity or enforceability of any bond of an authority or of the security ~~therefor~~ for the bond, the bond must be deemed conclusively to have been issued for a housing project if the bond recites that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low or moderate income. The project ~~conclusively must be deemed to have been~~ is planned, located, and constructed in accordance with ~~the purposes and provisions of~~ this chapter if ~~such a~~ this statement is contained in the bond.

SECTION 8. AMENDMENT. Section 23-11-24 of the North Dakota Century Code is amended and reenacted as follows:

23-11-24. Provisions of bonds, trust indentures, and mortgages. In connection with the issuance of bonds or the incurring of obligations under leases; and in order to secure the payment of ~~such~~ the bonds or obligations, an authority, in addition to ~~its~~ the authority's other powers, has power:

1. To pledge all or any part of ~~its~~ the authority's gross or net rents, fees, or revenues to which ~~its~~ the authority's right then exists or thereafter may come into existence.
2. To mortgage all or any part of ~~its real or personal~~ the authority's property then owned or thereafter acquired.
3. To covenant against pledging all or any part of ~~its~~ the authority's rents, fees, and revenues, or against mortgaging all or any part of ~~its real or personal~~ the authority's property, to which ~~its~~ the authority's right or title then exists or thereafter may come into existence, or against permitting or suffering any lien on any ~~such~~ revenues or property.
4. To covenant with respect to limitations on ~~its~~ the authority's right to sell, lease, or otherwise dispose of any housing projects or any part ~~thereof~~ of a housing project.
5. To covenant as to what other or additional debts or obligations may be incurred by ~~it~~ the authority.

6. To covenant as to the bonds to be issued and as to the issuance of ~~such~~ bonds in escrow or otherwise, and as to the use and disposition of the proceeds ~~thereof~~ of the bonds.
7. To provide for the replacement of lost, destroyed, or mutilated bonds.
8. To covenant against extending the time for the payment of ~~its~~ the authority's bonds or interest ~~thereon~~ on the bonds.
9. To redeem the bonds, to covenant for ~~their~~ the bonds' redemption, and to provide the terms and conditions ~~thereof~~ of redemption.
10. To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made ~~thereof~~ of the same.
11. To create, or to authorize the creation of, special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in ~~such~~ these funds.
12. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent ~~thereto~~, and the manner in which ~~such~~ consent may be given.
13. To covenant as to the use of any or all of ~~its real or personal~~ the authority's property.
14. To covenant as to the maintenance of ~~its real and personal~~ the authority's property, the replacement ~~thereof~~ of property, the insurance to be carried ~~thereon~~ on property, and the use and disposition of insurance moneys.
15. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by ~~it~~ the authority of any covenant, condition, or obligation.
16. To covenant and prescribe as to events of default and terms and conditions upon which any or all of ~~its~~ the authority's bonds or obligations shall become, or may be declared, due before maturity, and as to the terms and conditions upon which ~~such~~ the declaration and ~~its~~ the declaration's consequences may be waived.
17. To vest in a trustee or trustees or in the holders of bonds, or any proportion of ~~them~~ trustees or holders, the right to enforce the payment of the bonds or any covenants securing or relating ~~thereto~~ to the bonds.
18. To vest in a trustee or trustees the right, in the event of a default by the authority, to take possession and to use, operate, and manage any housing project or part ~~thereof~~ of the housing project, to collect the rents and revenues arising ~~therefrom~~ from the housing project, and to dispose of ~~such~~ these moneys in accordance with the agreement of the authority with ~~said~~ the trustee.

19. To provide for the powers and duties of a trustee or trustees and to limit the liabilities ~~thereof~~ of the trustee.
20. To provide the terms and conditions upon which the trustee or trustees or the holders of bonds, or any proportion of ~~them~~ trustees or holders, may enforce any covenant or rights securing or relating to the bonds.
21. To exercise all or any part or combination of the powers ~~herein~~ granted in this section.
22. To make covenants ~~other than, and~~ and in addition to, the covenants ~~herein~~ expressly authorized, of like or different character.
23. To make ~~such~~ such covenants and to do any ~~and all such~~ and all such acts and things as may be necessary, convenient, or desirable in order to secure ~~its~~ the ~~authority's~~ authority's bonds, or, in the absolute discretion of ~~said~~ said the authority, as will tend to make the bonds more marketable notwithstanding that ~~such~~ such the covenants, acts, or things ~~may are not be~~ are not be enumerated ~~herein~~, including:
 - a. To the payment of the principal of and interest on bond obligations, when due, there may be pledged as a first charge and lien the gross revenues of the housing project financed in whole or in part by the obligations, and the governing city or county may covenant to provide additional funds for the benefit of that housing project to the extent that the gross revenues in excess of those debt service requirements are not also sufficient from time to time to pay the reasonable operating and maintenance expenses of that housing project.
 - b. The principal amount of the issue must be approved by the governing body of the city or county in which the housing project is located and whose general obligation is pledged. Public hearings must be held on issuance of the obligations by the city or county in which the housing project is located. The hearings must be held at least fifteen days, but not more than one hundred twenty days, before the sale of the obligations.

SECTION 9. AMENDMENT. Section 23-11-29 of the North Dakota Century Code is amended and reenacted as follows:

23-11-29. Tax exemptions and payments in lieu of taxes. The property of an authority used for low-income housing, including an authority created under Indian laws recognized by the federal government, is declared to be public property used for essential public and governmental purposes and is exempt from all taxes and special assessments of the ~~city, the county, the state, or any political subdivision thereof~~. In lieu of ~~such~~ such taxes or special assessments, an authority may agree to make payments to the ~~city, county, state, or any such~~ city, county, state, or any such political subdivision for improvements, services, and facilities furnished ~~thereby by the state or political subdivision~~ for the benefits of a housing project, but in no event may such. The payments may not exceed the estimated cost ~~to such city, county, or political subdivision~~ of the improvements, services, or facilities to be so furnished. Notwithstanding any other provision of law, the property of an authority used for

moderate income housing is exempt from all taxes of the state or any political subdivision except special assessments unless specifically exempted from the special assessment by the political subdivision.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 238

SENATE BILL NO. 2345

(Senators Every, Triplett)
(Representatives Devlin, Nelson, Vigesaa)

HOUSING AUTHORITY COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 23-11-05 of the North Dakota Century Code, relating to the compensation of housing authority commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-05 of the North Dakota Century Code is amended and reenacted as follows:

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation. When the governing body of a city adopts a resolution, declaring there is need for a housing authority, ~~it the governing body~~ promptly shall notify the mayor of ~~such the~~ adoption. Upon receiving ~~such the~~ notice, the mayor shall appoint five persons as commissioners of the authority ~~created for said city~~. When the governing body of a county adopts a resolution declaring there is need for a housing authority, ~~said the governing body~~ shall appoint five persons as commissioners of the authority ~~created for said 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~~, after that time each commissioner must be appointed for a term of office of five years except that all vacancies must be filled for the unexpired term. A commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and ~~such the~~ certificate is conclusive evidence of the due and proper appointment of ~~such the~~ commissioner. A commissioner, other than one who is a county commissioner, may receive ~~ten dollars up to forty-five dollars~~ a day for each day necessarily devoted to the work of the office and is entitled to the necessary expenses, including traveling expenses, ~~incurred in the discharge of these duties~~. The per diem compensation provided for in this section may not exceed ~~three~~ six hundred dollars in any one fiscal year. A commissioner, other than one who is a county commissioner, also may be compensated for the necessary expenses, including travel expenses, incurred in the discharge of the commissioner's duties.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 239

SENATE BILL NO. 2300

(Senators Kilzer, G. Lee)
(Representatives Kaldor, Kingsbury)

SMOKING RESTRICTIONS

AN ACT to create and enact a new section to chapter 23-12 and a new section to chapter 34-06 of the North Dakota Century Code, relating to smoke-free exceptions and the authority of the labor commissioner; to amend and reenact sections 23-12-09, 23-12-10, 23-12-10.2, and 23-12-11 of the North Dakota Century Code, relating to smoke-free environments; to repeal section 23-12-10.1 of the North Dakota Century Code, relating to smoking area signage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is amended and reenacted as follows:

23-12-09. Smoking in public places of public assembly and places of employment - Definitions. In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Place of public assembly" means:

- a. Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles used in public transportation; rooms in which persons are confined as a matter of health care, including the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care institution or facility, and waiting areas in all public transportation terminals.
- b. Any building or other enclosed structure owned or leased by the state, its agencies, or political subdivisions, and all public education buildings.
- c. Each portion of a building or enclosed structure that is not included in this subsection if it has the seating capacity for fifty or more persons and is available to the public, including restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, regardless of whether the establishments serve alcoholic beverages.

The term does not include private, enclosed rooms of residence, establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises, including private and fraternal organizations, or areas used for the service of alcoholic beverages and which are physically separate rooms within food service establishments.

2. "Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or other smoking equipment in a place of public

assembly outside a designated smoking area. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages if the bar is in a separately enclosed area.

2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
4. "Employer" means an individual, business, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
6. "Health care facility" means any office or institution providing health care services, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility; and laboratory.
7. "Health care services" include medical, surgical, dental, vision, chiropractic, and pharmaceutical services.
8. "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs.
9. "Public place" means an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; child care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities.

including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms.

10. "Publicly owned building or office" means a place owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

11. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

3- 14. "Smoking" means carrying, possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted ~~smoking equipment~~ tobacco product in any manner or in any form.

15. "Sports arena" means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers.

SECTION 2. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Designation of smoking areas Smoking restrictions - Exceptions - Retaliation - Application. Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas may be designated only by proprietors of privately owned buildings or by public officials having general supervisory responsibility for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily,

during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
4. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
5. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 3. AMENDMENT. Section 23-12-10.2 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10.2. Complaints and enforcement - City and county ordinances and home rule charters. ~~The state department of health is designated to receive reports or complaints from any person regarding violations of sections 23-12-09 through 23-12-11.~~

1. ~~State agencies with statutory jurisdiction over places of public assembly may a state-owned building or office shall enforce sections 23-12-09 through 23-12-11 section 23-12-10.~~ These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may ~~amend their~~ adopt administrative rules to ensure compliance with ~~sections 23-12-09 through 23-12-11~~ section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

~~Authorities other than state agencies may conduct inspections and report violations to state agencies, or enforce smoking policies, rules, or ordinances more stringent than those contained in sections 23-12-09 through 23-12-11.~~

2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

SECTION 4. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Exceptions - Medical necessity.

1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff.
2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or a licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23-12-11. Penalty. Any proprietor

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction.
2. An owner or other person with general supervisory responsibility over a place of public assembly who willfully fails to comply with sections

~~23-12-09 through 23-12-11 is subject to a fine not to exceed one hundred dollars per violation a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.~~

SECTION 6. A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

Authority of labor commissioner - Exception. Notwithstanding section 34-06-03, the labor commissioner may not adopt rules relating to sections 23-12-09 through 23-12-11. If the labor commissioner is made aware of a possible violation of chapter 23-12, the commissioner may refer the violation to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

SECTION 7. REPEAL. Section 23-12-10.1 of the North Dakota Century Code is repealed.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 240

HOUSE BILL NO. 1350

(Representatives Maragos, D. Johnson)
(Senators Heitkamp, Nelson)

HEARING-IMPAIRED SMOKE ALARMS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to rentals to deaf persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the North Dakota Century Code is amended and reenacted as follows:

23-13-15. Smoke detection systems for residential rental property - Penalty.

1. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single-family rental dwelling must be maintained and inspected by the tenant occupying the single-family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. The tenant is responsible for maintaining the system during the tenant's occupancy.
2. The landlord of a residential dwelling unit shall provide an approved visual smoke detection system or other visual alarm system for fire if requested in writing by a tenant who is deaf. A landlord is not subject to this subsection if the rental property of that landlord does not exceed one building and that building does not exceed four residential dwelling units.
3. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

- ~~3.~~ 4. Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 241

HOUSE BILL NO. 1191

(Representatives Devlin, Kreidt, Metcalf)
(Senators Fischer, J. Lee, Robinson)

LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact section 23-16-01.1 of the North Dakota Century Code, relating to a moratorium on long-term care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity.

1. 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 or when a nursing facility converts basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to nursing facility bed capacity, 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, 2003, a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2003 2005, and July 31, 2007.
2. Transfers of existing beds from one municipality facility to another municipality must be approved if the state department of health licensing requirements are met, during the period August 1, 2003, to July 31, 2007. Existing licensed beds released by a facility and transferred to another facility entity is permitted. Transferred nursing facility beds must become licensed within forty-eight months of transfer. Nursing facility beds transferred before August 1, 2005, which are awaiting nursing facility licensure, may be converted to basic care licensure.
3. Transfer of existing beds from one municipality facility to a tribal reservation during the period August 1, 2003, to July 31, 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to the number of beds transferred. A tribal facility may seek to participate, within forty-eight months of any transfer of beds, in the medical assistance program. Medical assistance payments may only be made to a medicaid-certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program including participation, screening, ratesetting, and licensing requirements. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the

beds may revert to nursing facility status after one year of licensure as basic care beds.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of health of the facility's intent to convert bed capacity. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 242

HOUSE BILL NO. 1279 (Representatives Porter, R. Kelsch) (Senator Cook)

BROWNFIELDS REMEDIATION AND INSTITUTIONAL CONTROLS

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to contaminated properties; to amend and reenact sections 11-33-01 and 40-47-01 and subsection 1 of section 58-03-11 of the North Dakota Century Code, relating to institutional controls by counties, cities, and townships; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

11-33-01. County power to regulate property. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

SECTION 2. A new section to chapter 23-20.3 of the North Dakota Century Code is created and enacted as follows:

Institutional controls, responsibility exemptions, and regulatory assurances for contaminated properties - Continuing appropriation.

1. The department may establish institutional controls or give site-specific responsibility exemptions or regulatory assurances to owners, operators, or lenders, as provided by this section for real property contaminated by regulated substances or other pollution or contamination regulated by the department under this chapter or chapter 61-28. To qualify for a site-specific responsibility exemption, the owner of the property, or the political subdivision establishing institutional controls under this section through its zoning authority, must:

- a. Delineate the vertical and horizontal extent and concentration of the pollution or contamination in soil and ground water;
 - b. Identify potential persons or receptors that may be impacted by the pollution or contamination, evaluate the potential for movement or migration of the pollution or contamination and potential pathways of exposure, and identify potential health or environmental impacts to persons or receptors based on the proposed property use;
 - c. Identify the past and current uses of the property, the current uses of contiguous properties, and zoning restrictions or regulations that apply to the property and contiguous properties;
 - d. Identify any surface water or ground water uses, or ground water wells, that may be impacted by the pollution or contamination;
 - e. Agree to comply with and complete any remediation or monitoring plan agreed to or ordered by the department as a condition of receiving a site-specific responsibility exemption, including monitoring of natural attenuation of pollution or contamination;
 - f. If remediation or monitoring of pollution or contamination is being conducted by a responsible party or governmental body other than the landowner or operator, agree to allow access for all monitoring or remedial activities reasonably related to the identified pollution or contamination;
 - g. Agree to any other reasonable institutional controls that are necessary to protect public health and welfare from pollution or contamination on the property or to satisfy environmental standards enforced by the department; and
 - h. Agree to comply with all institutional controls, letters of no further remediation, letters of no further action, or letters of regulatory assurance established or instituted under this section as a condition of receiving a property-specific or site-specific responsibility exemption or regulatory assurance.
2. "Institutional controls" are restrictions on the use and management of real property, including use and management of buildings or fixtures, that contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. Institutional controls may apply during environmental remediation activities, or may apply to residual regulated substances, pollutants, or other pollution or contamination or their byproducts that may remain on property after active environmental remediation activities are concluded or while natural attenuation of regulated substances or other pollution or contamination is occurring. Institutional controls may be established by the department as follows:
 - a. When an area made subject to institutional controls involves two or more property owners and an area larger than either one city block or ten acres [4.05 hectares], the department and the political subdivision having zoning authority over the property may agree to institutional controls relating to the identified area impacted by the

pollution or the contamination. Before the institutional controls become effective, they must be the subject of a public hearing and be established in the same manner as zoning regulations are established by that political subdivision. The political subdivision is responsible for providing all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department.

- b. In addition or in the alternative, the department also may establish institutional controls by agreement to an environmental covenant with the owner of the real property. Before agreeing to any environmental covenants under this subdivision, all contiguous landowners to the property to which the covenants will attach must be notified by certified mail or by service by publication as provided in the North Dakota Rules of Civil Procedure. An environmental covenant must state that it is an environmental covenant that runs with the land; have a legally sufficient description of the real property subject to the covenant; describe activity or use limitations and terms of access for any monitoring or remediation; identify every holder who is a grantee of the covenant; be signed by every holder and the owner of the property before a notary public; and describe the name and location of any administrative record for the environmental response or remediation identified for the property under subsection 1. All environmental covenants must be filed with the county recorder of the county in which the property is located.
3. In addition or in the alternative to institutional controls, after completion of the assessments and requirements of subsection 1, the department may issue a letter of no further remediation or a letter of no further action to a property owner when an environmental remediation is completed on the site or property, or when no institutional controls are necessary to protect public health or welfare or to come into compliance with an environmental standard that has been violated and later corrected on the site or property.
4. Notwithstanding any institutional controls established for any real property, the department has access for inspection and enforcement for environmental violations as provided by law.
5. If there is any additional discharge or release of a regulated substance, pollutant, or contaminant on the property subject to institutional controls or regulatory exemptions that intermingles with the delineated pollution or contamination identified under subsection 1, or if the owner or operator of the property manages the property in a manner that causes the contamination to migrate to a neighboring contiguous property or results in the exposure of contaminants to receptors on the property, then institutional controls or regulatory exemptions established under this section are voidable by the department after a public investigatory hearing by giving written notice to the political subdivision and the current owner of the property subject to the institutional controls, as well as any lender holding a lien on the property identified under subsections 7 and 8. Culpability of the owner or operator of the property for any new or additional discharge, release, or movement of pollution or contamination, as well as responsibility for any offsite discharge or release or culpability for exposure of onsite or offsite

receptors to pollution or contamination, must be considered by the department in determining whether to void any institutional controls, and any final determination by the department to void an institutional control is subject to review under chapter 28-32. If the institutional control is an environmental covenant established under subdivision b of subsection 2, the written notice voiding the environmental covenant as well as a copy of the covenant being voided by the department must be filed with the county recorder of the appropriate county.

6. Institutional controls may also be terminated or amended at any time by written agreement between the department, the relevant political subdivision, the owner of the property, or other body or person subject to the institutional controls, as well as any identified lender, after giving notice as described in subsection 2. Letters of no further remediation, of no further action, or regulatory assurance may be amended by written agreement of the participating parties.
7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters 59-01, 59-02, 59-03, and 59-04, and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.
8. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders who participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an agreement under subsection 7, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating to responsibility, notice, violation of agreement under subsection 7 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, provided the party has had no prior involvement with or responsibility for the site of the environmental

release, and uses and manages the property after the transfer or assignment in compliance with institutional controls or other conditions established under this section and the requirements of this chapter and chapter 61-28.

9. The department may adopt rules to implement this section. The department may assess administrative fees in an amount and manner established by rule against responsible parties. In addition, by agreement of the participants, under subsection 7 the department may collect an administrative fee for a specific site or project to address the department's costs and expenses at that site or project, in an amount agreed to under subsection 7, or may collect an administrative fee in an amount set by rule from a person making a request for a responsibility exemption or regulatory assurance under this section. Any administrative fees collected under this section must be deposited by the department in a separate account in the department's operating fund and used only for administration of remediation activities under this chapter or chapter 61-28 and moneys deposited in this account are appropriated to the department on a continuing basis. Administrative fees may not be collected out of federal moneys or against the petroleum tank release compensation fund.
10. The administrator of the petroleum tank release compensation fund under chapter 23-37 may request recovery of expenditures the administrator has made at a remediation site from the separate account in the department's operating fund from fees collected under this section if recovery may not be made from a responsible party or as provided in chapter 23-37. If the department determines that sufficient funds are available without compromising the remediation project at the site, moneys in the separate account may be used to reimburse the petroleum tank release compensation fund for expenditures the administrator has made at the remediation site.
11. All letters of partial or complete exemption from responsibility for remediation or further action issued by the department under this section may be revoked by the department if any condition of the letters is violated; if institutional controls on the property are not complied with; or if the person, governmental body, or entity violates any provision of this chapter or chapter 61-28.
12. "Environmental covenant" means a covenant running with the land as established under this section.
13. "Natural attenuation" means the reduction in the mass or concentration in soils or groundwater of a regulated substance, pollutant, contaminant, and the products into which a substance breaks down, due to naturally occurring physical, chemical, and biological processes, without human intervention. "Enhanced natural attenuation" means the enhancement of natural attenuation at a site by the addition of chemicals, biota, or other substances or processes. "Monitored natural attenuation" means the monitoring of natural attenuation as it occurs. The department in its discretion may consider natural attenuation or enhanced or monitored natural attenuation as remediation alternatives for a site when pollution or contamination on a site or property does not pose a threat to human health or the environment, and reasonable safeguards are established under this section or other provisions of state or federal law.

14. "Regulatory assurance" means an assurance issued by the department concerning enforcement relating to existing contamination or pollution on a property or site based on compliance with conditions stated in a letter of regulatory assurance. A regulatory assurance is not voidable under subsection 5.
15. "Responsibility exemption" means a partial or complete exemption from responsibility for remediation or further action on a contaminated property or at a contaminated site based on compliance with the conditions identified in a letter of no further remediation or a letter of no further action. A responsibility exemption is voidable only against a person that violates an institutional control or a condition of a letter of no further action or no further remediation, or that is responsible for a new or additional release or migration of a regulated substance or pollutant on the property or site, or whose actions or negligence cause the violation, release, or migration.
16. "Responsible party" means a person who causes or contributes to an onsite or offsite release or discharge, or who is responsible for an illegal or unpermitted storage, of a pollutant or regulated substance in violation of this chapter or chapter 61-28, that results in the contamination or pollution of a property or site. "Potentially responsible party" means a person who is identified as a possible cause of, or contributor to, contamination or pollution on a site or property.
17. This section does not affect the authority of the department, the state, or its political subdivisions to exercise any powers or duties under this chapter or other provisions of state law with respect to any new or additional discharge or release or threatened discharge or release of a pollutant or regulated substance on a property or site regulated under this section, or the right of the department or any other person to seek legal or equitable relief against any person that is not subject to a liability protection provided under this section.

SECTION 3. AMENDMENT. Section 40-47-01 of the North Dakota Century Code is amended and reenacted as follows:

40-47-01. Cities may zone - Application of regulations. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

SECTION 4. AMENDMENT. Subsection 1 of section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or

more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 2 of this Act.

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

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 243

HOUSE BILL NO. 1291

(Representatives Brandenburg, Froelich, Kempenich, Nicholas)
(Senators Erbele, Taylor)

ANIMAL FEEDING OPERATIONS

AN ACT to amend and reenact sections 23-25-11 and 42-04-01 of the North Dakota Century Code, relating to animal feeding operations and livestock auction markets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. 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. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
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 [30.48 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.

- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02 or 58-03-11, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.
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. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
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.
7.
 - a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
 - (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
 - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
 - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
 - b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.
 - c. For purposes of this section:
 - (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - (4) One cow-calf pair equals 1.0 animal unit;

- (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
 - (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - (7) One horse equals 2.0 animal units;
 - (8) One sheep or lamb equals 0.1 animal unit;
 - (9) One turkey equals 0.0182 animal unit;
 - (10) One chicken, other than a laying hen, equals 0.008 animal unit;
 - (11) One laying hen equals 0.012 animal unit;
 - (12) One duck equals 0.033 animal unit; and
 - (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of ~~production of~~ producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and ~~including, to a variable extent,~~ includes the preparation of these products for people's use and ~~their the disposal of these products by marketing or otherwise, and other means.~~ The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 244

HOUSE BILL NO. 1243

(Representatives Uglem, D. Johnson, Porter, Vigesaa)
(Senators J. Lee, Warner)

EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING

AN ACT to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to emergency medical services personnel training.

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, certification, licensure, and quality review - Penalty. The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel, instructors, and training institutions. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing 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, and define minimum standards for emergency medical services training institutions. Licensing as an emergency medical services training institution is optional. It is a class B misdemeanor for an individual to willfully misrepresent that individual's certification or licensing status as 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.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 245**SENATE BILL NO. 2225**

(Senator Andrist)

HOSPITAL DISTRICT ELECTOR MEETINGS

AN ACT to amend and reenact section 23-30-05 of the North Dakota Century Code, relating to regular meetings of electors of hospital districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-30-05 of the North Dakota Century Code is amended and reenacted as follows:

23-30-05. Regular meeting to be held. A regular meeting of the electors who are owners of any interest in real property assessed for taxation in the district and who are residing within the boundaries of a district must be held ~~in the first quarter of each calendar year~~ at a time determined by the board of directors and special meetings may be called by the board of directors at any time. Notice ~~thereof of a meeting~~ must be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which ~~such the~~ the district is situated. The meeting must be held not less than seven days nor more than fourteen days after the date of publication of ~~such the~~ the notice.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 246

SENATE BILL NO. 2275

(Senators Cook, Krebsbach, Warner)
(Representatives R. Kelsch, Porter, Price)

HEALTH DISTRICT LEVY LIMITATIONS

AN ACT to amend and reenact subsection 3 of section 23-35-05 and subsection 1 of section 23-35-07 of the North Dakota Century Code, relating to property tax levy limitations of merged health districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 23-35-05 of the North Dakota Century Code is amended and reenacted as follows:

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, unless one or more of the combining entities was previously levying more than five mills, in which case the mill levy for property within the former entity that was levying more than five mills may not exceed the cap, expressed in mills, as previously authorized for that entity.

SECTION 2. AMENDMENT. Subsection 1 of section 23-35-07 of the North Dakota Century Code is amended and reenacted as follows:

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 taxable 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, except as otherwise permitted under subsection 3 of section 23-35-05. 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.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 16, 2005

Filed March 17, 2005

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 247

HOUSE BILL NO. 1218

(Representative Keiser)

DOT CONSULTANT HIRING

AN ACT to amend and reenact section 24-02-07.3 of the North Dakota Century Code, relating to the hiring of prequalified consultants by the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-07.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-07.3. Prequalification, selection, and contracting for consultants - Solicitations.

1. The director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status and must be provided to the director in a form approved by the director. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work in the areas in which the consultant is prequalified without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.
2. The director is not required to comply with subsection 3 of section 54-44.7-03 or 54-44.7-04 and may procure the services of consultants for:

 - a. Projects with consultant costs estimated to be not more than twenty-five thousand dollars through direct negotiation with a selected prequalified firm, after considering the nature of the

project; the proximity of the architect, engineer, construction management, or land surveying services to the project; the capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time; past performance; and the ability to meet project budget requirements. Fees paid pursuant to this subdivision during the twelve months immediately preceding negotiation of the contract by the department of transportation for professional services performed by any one architectural, engineering, or land surveying individual or firm may not exceed fifty thousand dollars. A person seeking to render professional services under this section shall furnish the department a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated.

- b. Projects with consultant costs estimated to be greater than twenty-five thousand dollars but not more than one hundred thousand dollars by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.
- c. Projects with consultant costs estimated to be greater than one hundred thousand dollars by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.

Approved March 8, 2005

Filed March 8, 2005

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 248

SENATE BILL NO. 2131

(Human Services Committee)

(At the request of the Department of Human Services)

COMMITMENT PROCEDURE EXAMINERS

AN ACT to amend and reenact subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code, relating to the definitions of expert examiner and independent expert examiner for commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program, and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician ~~or~~, licensed addiction counselor, or licensed psychologist trained in a clinical program.
8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician ~~or~~, licensed addiction counselor, or licensed psychologist trained in a clinical program.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 249

HOUSE BILL NO. 1289

(Representatives DeKrey, Delmore, Horter)
(Senators Hacker, Syverson, Triplett)

SEXUALLY DANGEROUS INDIVIDUAL PROCEEDINGS OPEN

AN ACT to amend and reenact section 25-03.3-03, subsection 4 of section 25-03.3-03.1, and sections 25-03.3-05, 25-03.3-11, and 25-03.3-13 of the North Dakota Century Code, relating to making evidence presented at a commitment hearing, preliminary hearing, or commitment proceeding of a sexually dangerous individual open, notice to the attorney general, and the release of medically identifiable health information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-03 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-03. Sexually dangerous individual - Petition.

1. 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.
2. ~~Except for an order of the court committing a respondent for treatment or an order of the court discharging an individual from treatment and as provided in this section, the~~ The petition and all further records and proceedings under this chapter any proceeding under section 25-03.3-11 are confidential and are not public records or proceedings under sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. The court may permit access to a respondent's records or proceedings under this chapter to the respondent's guardian, guardian ad litem, or other similarly situated individual. The court may permit access to information in the respondent's records to other individuals who require the information for use in performing official governmental duties. Notwithstanding any other provision of law, proceedings under section 25-03.3-13 and any evidence introduced or presented to the court for any such proceeding are required to be open to the public, with the exception of a proceeding involving an individual who has not been convicted of a sexual act as defined in section 25-03.3-01. The protections of subsection 10 of section 12.1-34-02 and section 12.1-35-03 apply to any records or proceedings under this chapter.

SECTION 2. AMENDMENT. Subsection 4 of section 25-03.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Following the receipt of a referral, but at least sixty days before the release date of the inmate, the state's attorney shall notify the

department and the attorney general of the state's attorney's intended disposition of the referral.

SECTION 3. AMENDMENT. Section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-05. Abrogation of confidentiality statutes and privileges.

1. 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.
2. For purposes of this chapter, a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment.

SECTION 4. AMENDMENT. Section 25-03.3-11 of the North Dakota Century Code is amended and reenacted as follows:

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 knowingly waives 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. The court may receive evidence that would otherwise be inadmissible at a commitment 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.

An individual with mental retardation may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with mental retardation.

SECTION 5. AMENDMENT. Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings. Within sixty 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.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 250

HOUSE BILL NO. 1057

(Representatives Koppelman, DeKrey, Delmore)
(Senators Traynor, Trenbeath, Nelson)

SEXUALLY DANGEROUS INDIVIDUALS COMMITMENT

AN ACT to create and enact a new section to chapter 25-03.3 of the North Dakota Century Code, relating to commitment of sexually dangerous individuals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Postcommitment community placement - Penalty.

1. Following commitment of a sexually dangerous individual, the executive director may conduct a risk management assessment of the committed individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis. The executive director may place a committed individual in the community for treatment on an outpatient basis only pursuant to a court order. The executive director may petition the court at any time for community placement. The executive director shall give the state's attorney of the county of community placement notice of any petition for community placement 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. The state's attorney may waive this right. At any hearing held pursuant to a petition by the executive director for the community placement of a committed individual, the burden of proof required of the executive director is a preponderance of the evidence. The court's order of community placement must contain appropriate restrictions and requirements for the committed individual, including:
 - a. Participation and compliance with a specific course of treatment;
 - b. Submission to electronic monitoring and any other appropriate supervision;
 - c. Prohibition of the individual changing place of residency or leaving the state without prior authorization of the court;
 - d. Establishment of safety zones, and compliance by the committed individual with those safety zones;
 - e. Requirement that the committed individual notify the court within twenty-four hours of any change in the individual's status that affects proper treatment or supervision;

- f. Contact with victims is prohibited independent of a supervised treatment plan; and
 - g. Any other restriction or requirement deemed necessary by the court to assure public safety and proper treatment of the committed individual.
- 2. Violation by a committed individual of a court order issued pursuant to this section is a class C felony.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 251

HOUSE BILL NO. 1231

(Representatives D. Johnson, Maragos, Nicholas)
(Senator Traynor)

DEAF AND HEARING-IMPAIRED SERVICES

AN ACT to create and enact a new section to chapter 25-07 of the North Dakota Century Code, relating to the provision of services to individuals who are deaf or hearing-impaired; and to amend and reenact sections 25-07-01, 25-07-04, 25-07-05, 25-07-06, 25-07-08, and 25-07-11 of the North Dakota Century Code, relating to the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-07-01 of the North Dakota Century Code is amended and reenacted as follows:

25-07-01. School for the deaf - Maintained - Location - Purpose. There must be maintained at Devils Lake, in Ramsey County, ~~an institution for the education of the deaf which must be known as the~~ a school for the deaf, which may provide education and training and serve as a resource and referral center for individuals who are deaf or hearing-impaired.

SECTION 2. AMENDMENT. Section 25-07-04 of the North Dakota Century Code is amended and reenacted as follows:

25-07-04. Qualifications for admission to school for the deaf - Residents of state entitled to free education. ~~Each applicant~~

1. A child who is a resident of this state and who, because of deafness or a hearing impairment, is unable to receive an education in the public schools, is entitled to receive an education in attend the school for the deaf at the expense of the state. The North Dakota school for the deaf serves deaf or hearing-impaired children from birth through age A child is entitled to attend the school at any age up to twenty-one.
2. The North Dakota school for the deaf shall furnish provide application blanks forms upon request and no child will. A child may not be admitted to the school until the child's application is completed and approved. Students enrolled must be furnished
3. The school for the deaf shall provide transportation by the school for the deaf as indicated in the student's to any child who has been admitted, in accordance with the child's individual education plan.

~~All deaf or hearing-impaired children who are residents of the state are~~

4. Any child who is a resident of this state and who is deaf or hearing-impaired is entitled to receive special education and related services based on a completed in accordance with the child's individual education program, which considers the. Each individual education program must address the child's academic, recreational, and leisure needs, as well as the acquisition of independent living skills, and career

and technical education; ~~recreational, and leisure needs of each child opportunities.~~

SECTION 3. AMENDMENT. Section 25-07-05 of the North Dakota Century Code is amended and reenacted as follows:

25-07-05. Admission of nonresidents. ~~Deaf children of suitable age who are not residents of this state may enroll in~~ A child who is deaf or hearing-impaired but who is not a resident of this state may be admitted to the school for the deaf upon payment in advance of the, provided the annual cost of the child's education, as determined by the superintendent of public instruction. Nonresident children, however, may not be received to the exclusion of children who are residents of this state, is paid on behalf of the child in advance of the child's admission and on a yearly basis thereafter. The school may not admit a child who is not a resident of this state to the exclusion of a child who is a resident of this state.

SECTION 4. AMENDMENT. Section 25-07-06 of the North Dakota Century Code is amended and reenacted as follows:

25-07-06. Instruction at school for the deaf. The superintendent of the school for the deaf shall provide special education and related services designed to meet the unique needs of each child who is deaf or hearing-impaired students according to, in accordance with the child's individual education programs as required by federal and state laws and regulations program.

SECTION 5. AMENDMENT. Section 25-07-08 of the North Dakota Century Code is amended and reenacted as follows:

25-07-08. Clothing may be furnished when necessary - Accounts for clothing. ~~The superintendent of the school for the deaf shall furnish suitable clothing to a pupil provide clothing to a child who is enrolled in the school who otherwise is not provided with the same. An account, certified as correct by the superintendent, must be made for clothing furnished to any pupil:~~

- 1- ~~Against the parent or guardian of such pupil if the pupil is a minor; or~~
- 2- ~~Against the pupil if the pupil has no parent or guardian or has attained if the child does not have suitable clothing. If the child is a minor, the school shall charge the child's parent or legal guardian for any clothing provided to the child under this section and shall charge the individual for any clothing provided to the individual under this section if the individual has reached the age of majority. An account certified as correct by If the superintendent must be certifies any charges under this section as being correct, the charges are presumed correct in all courts.~~

SECTION 6. AMENDMENT. Section 25-07-11 of the North Dakota Century Code is amended and reenacted as follows:

25-07-11. Home intervention program. The school for the deaf may provide a home intervention program for children who are under the age of five and who are deaf or hearing-impaired preschoolers, under the age of five, which must consist of supplying. The program must include information, counseling services, auditory training, and basic language development programs instruction for the parents of such children. This home intervention program will must be carried out by college or university trained teachers of the deaf, speech pathologists, or audiologists.

SECTION 7. A new section to chapter 25-07 of the North Dakota Century Code is created and enacted as follows:

Provision of services - Collaboration - Competition. The school for the deaf may collaborate with public and private entities for the provision of services to individuals who are deaf or hearing-impaired. The school for the deaf may not compete with any public or private entity offering the same services within a region.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 252

HOUSE BILL NO. 1146

(Human Services Committee)

(At the request of the Department of Human Services)

DEVELOPMENTAL DISABILITIES CARE CENTER INVESTMENTS

AN ACT to create and enact two new sections to chapter 25-18 of the North Dakota Century Code, relating to treatment or care centers for individuals with developmental disabilities; to amend and reenact sections 25-18-01 and 25-18-05 of the North Dakota Century Code, relating to payment to treatment or care centers for individuals with developmental disabilities; to repeal sections 25-18-02, 25-18-04, 25-18-06, 25-18-07, 25-18-08, 25-18-11, and 25-18-12 of the North Dakota Century Code, relating to a fee-for-service ratesetting system for treatment or care centers for individuals with developmental disabilities; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 25-18 of the North Dakota Century Code are created and enacted as follows:

Treatment or care center budget flexibility. The department shall allow treatment or care centers to transfer funds received from the department between budget categories and line items.

Maximum annual return on investment. Profit-motivated institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt divided by original asset cost and must be determined as follows:

Annual average percentage debt
to annual average assets
51 to 80 percent -

0 to 50 percent -

Return
2 percent return on original
cost of fixed assets
3 percent return on original
cost of fixed assets

SECTION 2. AMENDMENT. Section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:

25-18-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. ~~"Fee for service" means a prospective rate based on allowable historical costs established by the department for payment of services provided to individuals with developmental disabilities by a treatment or care center.~~

3. "Historical operating costs" means the allowable costs of operating a treatment or care center during the reporting year in compliance with licensing standards prescribed by the department but does not include an annual return on investment in fixed assets related to client care.
4. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for the mentally retarded as defined in the section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

SECTION 3. AMENDMENT. Section 25-18-05 of the North Dakota Century Code is amended and reenacted as follows:

25-18-05. Limitation on owner compensation for services provided. ~~In establishing the fee to be paid for a service, the~~ For-profit treatment or care centers may compensate working owners and their families for time worked on behalf of the treatment or care center. The amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46+	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the treatment or care center. A proration of the total compensation for owners who perform services in this state and who perform services in other states must be made on the basis of individual time distribution records. For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that ~~organization~~ treatment or care center. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition or enhancement to the ~~fee~~ rate payable to a treatment or care center.

SECTION 4. REPEAL. Sections 25-18-02, 25-18-04, 25-18-06, 25-18-07, 25-18-08, 25-18-11, and 25-18-12 of the North Dakota Century Code are repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 4, 2005
Filed March 4, 2005

INSURANCE

CHAPTER 253

SENATE BILL NO. 2347

(Senators Wardner, Flakoll, Heitkamp)
(Representatives Delmore, L. Meier, Monson)

SELF-INSURANCE BY COOPERATIVE AGREEMENT

AN ACT to amend and reenact section 26.1-01-07.4 of the North Dakota Century Code, relating to cooperative agreements for group health care coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-07.4 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07.4. Group health care coverage - Cooperative agreement allowed. The insurance commissioner shall adopt rules to enable groups to form a cooperative that would allow those groups to purchase group health insurance coverage or to self-insure as one entity.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 254

SENATE BILL NO. 2194

(Senators Klein, Krebsbach)
(Representatives Keiser, Wald)

REINSURANCE TREATMENT AND DELINQUENCY

AN ACT to amend and reenact sections 26.1-02-21 and 26.1-06.1-31 of the North Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or dissolution and reinsurer's liability in delinquency proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution. ~~No credit~~

1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance ~~is~~ contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer or to its domiciliary liquidator or receiver except when. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
4. a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; ~~and~~ or
2. b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

3. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, in the proceeding in which the claim is to be adjudicated any defenses the assuming insurer determines available to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed as a claim against the insolvent ceding insurer as a class 7 claim under section 26.1-06.1-41 to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. If two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

SECTION 2. AMENDMENT. Section 26.1-06.1-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-31. Reinsurer's liability.

1. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of the delinquency proceedings; regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
 - a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
 - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to such payees.

2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 255

HOUSE BILL NO. 1213

(Representatives Dosch, Ekstrom, N. Johnson)
(Senators Espegard, Heitkamp, Klein)

UNAUTHORIZED INSURANCE SALES

AN ACT to amend and reenact section 26.1-02-25 of the North Dakota Century Code, relating to the penalty for an insurance company selling unauthorized insurance without a license; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-25 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-25. Penalty. Any unauthorized insurance company or other insurance entity or any representative or agent of the company or entity that transacts any unauthorized act of insurance business as provided by this chapter is guilty of a class A ~~misdemeanor~~ C felony.

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

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 256

SENATE BILL NO. 2088

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE INCORPORATION ARTICLES REVIEW

AN ACT to amend and reenact sections 26.1-05-07, 26.1-13-02, 26.1-13-33, and 26.1-16-07 of the North Dakota Century Code, relating to review of insurance company articles of incorporation and amendments by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-07. Examination of articles by attorney general and by commissioner - Certificate - Filing. The ~~attorney general~~ commissioner shall examine the articles of incorporation and any amendments ~~and if they conform to this chapter and to determine if the articles and any amendments~~ are consistent with the constitution and laws of this state ~~shall certify to the commissioner~~. The commissioner shall examine the company to ascertain whether it has complied with the requirements of law according to the nature of the business proposed to be transacted by it. If the commissioner is satisfied by the examination that the corporation has complied with the law, the commissioner shall deliver to it a certified copy of the articles of incorporation or amendments to the articles of incorporation and a certificate stating the corporation has complied with all requirements of law. The certified copy of the articles of incorporation or amendments to the articles of incorporation and of the certificate may be used for or against the company with the same effect as the originals and are conclusive evidence of the fact of organization of the company as of the date of the certificate.

SECTION 2. AMENDMENT. Section 26.1-13-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required. Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner ~~and to the attorney general~~ the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. Upon a showing of good cause, the territory of operations of the merged company may exceed thirty counties. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and

in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.
2. The name of the city in or near which the business office of the company is to be located.
3. The intended duration of the company, which is perpetual.

SECTION 3. AMENDMENT. Section 26.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-33. Articles and bylaws of mutual reinsurance company - Certificate of authority - Right to do business. The articles of incorporation and bylaws of a mutual reinsurance company formed under section 26.1-13-31 must be submitted for approval to the ~~attorney general and to the~~ commissioner. If the articles and bylaws are found to conform with this chapter and not inconsistent with the constitution or laws of this state, the commissioner shall approve the articles and bylaws and they must be filed in the office of the secretary of state. A certified copy of the articles and bylaws then must be filed with the commissioner, and a copy must be delivered to the members of the company. The commissioner shall issue a certificate to the effect that the company has complied with the requirements of law. The certificate is the company's authority to commence business and issue policies. A certified copy of the articles and the certificate may be used for or against the company with the same effect as the originals and is conclusive evidence of the organization of the company as of the date of the certificate.

SECTION 4. AMENDMENT. Section 26.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-07. Articles of incorporation - Filing - Approval - Deposit required - Authority to solicit. The articles of incorporation must be submitted to the ~~attorney general, and if the attorney general finds them in conformity with this chapter and not inconsistent with the constitution and laws of this state, the attorney general shall approve the articles and certify them to the~~ commissioner, who also shall examine the articles to ascertain whether they comply with all applicable requirements of the law. After the articles have been approved by the ~~attorney general and by the~~ commissioner, they must be filed in the office of the secretary of state, and a certified copy must be filed with the commissioner. The society shall deposit with the commissioner United States government bonds, United States treasury certificates, bonds of the state of North Dakota, or certificates of deposit of the Bank of North Dakota in the amount of at least two hundred fifty dollars. Upon filing the certified copy of its articles and making the deposit, the society may solicit and secure the necessary preliminary members as the basis for the issuance to it of a certificate of authority. The solicitation of such members, however, must be conducted in accordance with any applicable rules adopted by the commissioner.

Approved March 8, 2005
Filed March 8, 2005

CHAPTER 257

SENATE BILL NO. 2093

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE HEARING WAIVERS

AN ACT to amend and reenact section 26.1-07-05.1 and subsection 4 of section 26.1-10-03 of the North Dakota Century Code, relating to waiver of dissolution, merger, or acquisition hearings by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-07-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-07-05.1. Hearing on petition - General duties of commissioner. The commissioner shall hold a hearing on the petition and determine whether the consolidation or reinsurance will be allowed. The hearing must be conducted under chapter 28-32. Within sixty days of the close of the hearing, the commissioner shall enter findings of fact, conclusions of law, and an order either approving or disapproving any petition. The commissioner in making the determination shall consider the following:

1. Whether the proposed consolidation or reinsurance contract is inequitable to the policyholders of any domestic insurance company involved;
2. Whether the proposed consolidation or reinsurance contract would materially reduce the financial security of policyholders of the domestic insurer in this state or elsewhere; and
3. Whether the competence, experience, and integrity of the persons of a foreign insurance company who would control the operation of the consolidated insurance company or the reinsuring company are such that it would not be in the interest of the policyholders of the company to permit the consolidation or reinsurance contract.

The findings of fact, conclusions of law, and order entered by the commissioner are subject to appeal under chapter 28-32. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:
 - a. After the change of control, the domestic insurance company referred to in subsection 1 would not be able to satisfy the

requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.

- b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.
- c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of its policyholders.
- d. The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the company and not in the public interest.
- e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
- f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

The commissioner shall hold the public hearing referred to in this subsection within thirty days after the statement required by subsection 1 is filed and shall give at least twenty days' notice to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the insurance company and to other persons designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurance company, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing. The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

CHAPTER 258

SENATE BILL NO. 2244

(Senator Brown)
(Representative Price)

CHAND COVERAGE ELIGIBILITY

AN ACT to amend and reenact subsection 9 of section 26.1-08-01, subsections 4 and 10 of section 26.1-08-12, and section 26.1-08-13 of the North Dakota Century Code, relating to eligibility for coverage under the comprehensive health association of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Health insurance coverage" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes benefits that pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible individual, chiropractic care. The term does not include:
 - a. Coverage only for accident, disability income insurance, or any combination of the two;
 - b. Coverage issued as a supplement to liability insurance;
 - c. Liability insurance, including general liability insurance and automobile liability insurance;
 - d. Workforce safety and insurance or similar insurance;
 - e. Automobile medical payment insurance;
 - f. Credit-only insurance;
 - g. Coverage for onsite medical clinics; or
 - h. Other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits;
 - i. Limited scope dental or vision benefits;
 - j. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of this care;
 - k. Other similar limited benefits specified under federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.];

- l. Coverage only for specified disease or illness;
- m. Hospital indemnity or other fixed indemnity insurance;
- n. Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act [42 U.S.C. 1395ss(g)(1)];
- o. Coverage supplemental to the coverage provided under chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care; or
- p. Similar supplemental coverage provided under a group health plan.

SECTION 2. AMENDMENT. Subsections 4 and 10 of section 26.1-08-12 of the North Dakota Century Code are amended and reenacted as follows:

- 4. An individual may qualify to enroll in the association for benefit plan coverage as:
 - a. A standard applicant:
 - (1) An individual who has been a resident of this state ~~for one hundred eighty-three days~~ and continues to be a resident of the state who has received from at least one insurance carrier within one hundred ~~eighty-three~~ eighty days of the date of application, one of the following:
 - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
 - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
 - (c) Refusal by an insurer to issue insurance except at the rate exceeding the association benefit rate.
 - (2) Is not eligible for the state's medical assistance program.
 - b. A Health Insurance Portability and Accountability Act of 1996 applicant:
 - (1) An individual who meets the federally defined eligibility guidelines as follows:
 - (a) Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01, the most recent of which is covered under a group health plan, governmental plan, or church plan;

- (b) Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;
 - (c) Is not eligible for coverage under a group health benefit plan as the term is defined in section 26.1-36.3-01, medicare, or medicaid;
 - (d) Does not have any other health insurance coverage;
 - (e) Has not had the most recent qualifying previous coverage described in subparagraph a terminated for nonpayment of premiums or fraud; and
 - (f) If offered under the option, has elected continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage has exhausted.
- (2) Is and continues to be a resident of the state.
- (3) Is not eligible for the state's medical assistance program.
- c. An applicant age sixty-five and over or disabled:
 - (1) An individual who is eligible for medicare by reason of age or disability and has been a resident of this state ~~for one hundred eighty-three days~~ and continues to be a resident of this state who has received from at least one insurance carrier within one hundred ~~eighty-three~~ eighty days of the date of application, one of the following:
 - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
 - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
 - (c) Refusal by an insurer to issue insurance except at the rate exceeding the association benefit rate.
 - (2) Is not eligible for the state's medical assistance program.
- d. A Trade Adjustment Assistance Reform Act of 2002 applicant:
 - (1) A trade adjustment assistance, pension benefit guarantee corporation individual applicant who:
 - (a) Has three or more months of previous health insurance coverage at the time of application;

- (b) Has applied for coverage within sixty-three days of the termination of the individual's previous health insurance coverage;
 - (c) Is and continues to be a resident of the state;
 - (d) Is not enrolled in the state's medical assistance program;
 - (e) Is not an inmate or a resident of a public institution; and
 - (f) Does not have health insurance coverage through:
 - [1] The spouse's employer if the coverage provides for employer contribution of fifty percent or more of the cost of coverage of the spouse, the eligible individual, and the dependents or the coverage is in lieu of an employer's cash or other benefit under a cafeteria plan.
 - [2] A state's children's health insurance program, as defined under section 50-29-01.
 - [3] A government plan.
 - [4] Chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care.
 - [5] Part A or part B of title XVIII of the federal Social Security Act [42 U.S.C. 1395 et seq.] relating to health insurance for the aged and disabled.
 - (2) Coverage under this subdivision may be provided to an individual who is eligible for health insurance coverage through the federal Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272; 100 Stat. 82]; a spouse's employer plan in which the employer contribution is less than fifty percent; or the individual marketplace, including continuation or guaranteed issue, but who elects to obtain coverage under this subdivision.
- 10. Preexisting conditions.
 - a. Association coverage must exclude charges or expenses incurred during the first one hundred eighty days following the effective date of coverage for any condition for which medical advice, diagnosis, care, or treatment was recommended or received during the ~~ninety~~ one hundred eighty days immediately preceding the date of the application.
 - b. Association coverage must exclude charges or expenses incurred for maternity during the first two hundred seventy days following the effective date of coverage.

- c. Any individual with coverage through the association 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 eighty days of coverage.
- d. A preexisting condition may not be imposed on an individual who is eligible under subdivision b or d of subsection 4.

SECTION 3. AMENDMENT. Section 26.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-13. Termination of coverage. The coverage of an individual who ceases to meet the eligibility requirements of this chapter may be terminated at the end of the policy period for which the necessary premiums have been paid. Coverage under this chapter terminates:

1. Upon request of the covered ~~person~~ individual.
2. For failure to pay the required premium subject to a thirty-one-day grace period.
3. When the one million dollar lifetime maximum benefit amount has been reached.
4. If the covered ~~person~~ individual qualifies for health benefits under the state's medical assistance program.
5. If the covered individual physically resides outside this state for more than one hundred eighty-two days of each calendar year, except for an individual who is absent from the state for a verifiable medical reason as determined by the board.
6. At the option of the plan, thirty days after the plan makes an inquiry concerning the individual's eligibility or place of residence to which the individual does not reply.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 259

HOUSE BILL NO. 1501

(Representatives Froseth, Damschen, Monson, Nicholas)
(Senator Klein)

COUNTY MUTUAL INSURANCE COMPANY BOUNDARIES

AN ACT to amend and reenact section 26.1-13-15 and subsection 2 of section 26.1-25-02 of the North Dakota Century Code, relating to territorial limits of county mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable. A county mutual insurance company may not insure any property beyond its the company's authorized territory of operation except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state unless:

1. ~~The~~ the policy issued provides coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of any incorporated city in this state on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof ~~as specified in sections 26.1-13-14 and 26.1-13-16 to existing members within the platted limits of any incorporated city in this state; or~~
2. ~~The policy issued provides coverage specified in sections 26.1-13-14 and 26.1-13-16 on property located within the platted limits of any incorporated city with a population of less than ten thousand located within the territory comprised in the formation of the company and on no more than four residential rental units of each policyholder.~~

The company may insure all property located outside of incorporated cities within the limits of the territory comprised in the formation of the company. Policies issued on property located within the platted limits of any incorporated city ~~may only cover with a population over ten thousand are limited to covering~~ the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof and ~~no more than four residential rental units of each policyholder and must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency. A company may not exceed twenty-five percent of the company's gross written premiums of the previous year for the gross written premiums in cities with a population over ten thousand.~~

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to subsection 2 of section 26.1-13-15 in any incorporated city with a population over ten thousand, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 260

HOUSE BILL NO. 1114

(Human Services Committee)

(At the request of the Insurance Commissioner)

HMO ANNUAL REPORT FILING

AN ACT to amend and reenact section 26.1-18.1-08 of the North Dakota Century Code, relating to annual reports filed by health maintenance organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-18.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18.1-08. Annual report.

1. Every domestic health maintenance organization shall annually, on or before March first, and every foreign health maintenance organization shall annually, on or before the date that its annual report is due in its domestic state, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year. The report must be on forms prescribed by the commissioner. In addition, the domestic health maintenance organization shall file by March first, and every foreign health maintenance organization shall file annually, on or before the date that its annual report is due in its domestic state, unless otherwise stated:
 - a. Audited financial statements on or before June first.
 - b. A list of the providers who have executed a contract that complies with subdivision a of subsection 4 of section 26.1-18.1-12.
 - c.
 - (1) A description of the grievance procedures.
 - (2) The total number of grievances handled through the procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.
2. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter. The commissioner may waive the filing of the annual report and other information for a health maintenance organization that has discontinued its operation in this state.
3. The commissioner may designate the national association of insurance commissioners as the repository for the filing of the annual report.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 261

SENATE BILL NO. 2043

(Legislative Council)
(Public Services Committee)

STATE BONDING

AN ACT to amend and reenact sections 4-18.1-04, 4-23-07, 15-19-06, 20.1-02-02, 25-01.1-20, 26.1-21-01, 26.1-21-02, 26.1-21-03, 26.1-21-04, 26.1-21-06, 26.1-21-07, 26.1-21-08, 26.1-21-09, 26.1-21-10, 26.1-21-11, 26.1-21-12, 26.1-21-14, 26.1-21-15, 26.1-21-16, 26.1-21-17, 26.1-21-18, 26.1-21-19, and 26.1-21-23, subsection 3 of section 27-05.2-02, and section 54-09-02 of the North Dakota Century Code, relating to the state bonding fund; and to repeal section 4-27-10 of the North Dakota Century Code, relating to bonding of the dairy promotion commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-04. Milk marketing board.

1. There is hereby created a milk marketing board to consist of five members appointed by the governor. The board consists of one ~~person~~ individual who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota milk producers association; one ~~person~~ individual who is a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota dairy industries association; one ~~person~~ individual who is a retailer, who must be selected by the governor from two names submitted to the governor by the North Dakota association of food retailers; and two ~~persons~~ individuals must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. An appointee may not have held elective or appointive public office during the period of two years immediately preceding appointment and may not hold any other public office, either elective or appointive, during the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.
2. The members of the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972; and each succeeding member holds office for a term of five years and until a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor.

3. Three members of the board constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman does not interfere with the member's right to vote on all matters before the board.
4. The board shall determine the amount of compensation payable to each member of the board. The amount payable may not exceed seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers, while attending meetings or performing duties directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.
5. Each member of the board shall give bond conditioned for the faithful performance of the member's duties ~~in the manner required by law in the sum of five thousand dollars.~~
6. The board shall employ a director who serves under the direction and at the pleasure of the board and whose qualifications, duties, and compensation must be determined by the board. The director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter. ~~Before beginning employment, the director shall execute and file a bond in an amount as may be fixed by the board or as may be provided by law for public officers.~~
7. 6. The board shall employ, in addition to the director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.
8. 7. All expenditures under this chapter must be paid from the receipts ~~hereunder~~ under this chapter. Meetings of the board must be held at least every sixty days at the call of the chairman or a majority of the board.

SECTION 2. AMENDMENT. Section 4-23-07 of the North Dakota Century Code is amended and reenacted as follows:

4-23-07. State agency to keep accounts - Accounts to be credited - Employees to be bonded. The state agency shall provide for the keeping of full and accurate accounts showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under ~~the provisions of this chapter and shall provide for the auditing of all such these accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this chapter.~~

SECTION 3. AMENDMENT. Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.

1. A special operating fund for the division of independent study must be maintained within the state treasury and all income and fees collected by the division of independent study from any source must be remitted monthly by the director to the state treasurer and credited to the special operating fund. All expenditures from the fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the technology director appointed by the educational technology council. Upon approval of the vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the division of independent study general fund appropriation to the special operating fund whenever its balance falls so low as to require supplementation.
2. The educational technology council may establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the division of independent study. The administrative operational fund must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the division of independent study for the payment of necessary expenses in the administration and operation of the division of independent study within the limits and rules prescribed by the educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the council in accordance with the rules adopted by the council, and thereafter the council may periodically authorize additional transfers to the administrative operational fund, but the balance in the fund may never exceed ten thousand dollars, and any unencumbered balance at the end of any biennium must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director. ~~The council shall determine the amount of the bond to be posted by the director.~~
3. The educational technology council may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the council or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the council or division of independent study which is designated by the council and donor for the scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. The state director of the division of independent study may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the educational technology council. The interest earned by the scholarship fund is appropriated to the division of independent study.

SECTION 4. AMENDMENT. Section 20.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-02. Bond and oath Oath of director. Before entering upon that ~~person's individual's~~ duties and within ten days after the date of appointment, the director shall take and file the oath prescribed for civil officers ~~and must be bonded in the penal sum of ten thousand dollars.~~

SECTION 5. AMENDMENT. Section 25-01.1-20 of the North Dakota Century Code is amended and reenacted as follows:

25-01.1-20. Care and custody of funds belonging to patients of state institutions. The superintendent of any state institution under the management and control of the supervising department, when the care and custody of any funds belonging to patients ~~thereof~~ of a state institution are by law devolved upon the superintendent, shall keep accurate accounts of ~~such~~ these funds in books provided for that purpose and shall pay out ~~such these~~ funds under ~~such~~ rules and regulations as may be prescribed by law or by the supervising department, taking proper vouchers ~~therefor of the funds~~ in all cases from the patient or responsible representative of ~~such the~~ patient. Each superintendent shall give a bond in ~~such sum as may be required by law, or as may be prescribed by the supervising department,~~ conditioned for the faithful performance of duties and a due accounting for the funds entrusted to the superintendent's care.

SECTION 6. AMENDMENT. Section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Blanket bond" means a bond that covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.
2. "Fund" means the state bonding fund.
3. "International peace garden" means an 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.
4. "Political subdivision" means ~~all counties a county, townships township,~~ park ~~districts~~ district, school ~~districts~~ district, ~~cities~~ city, and any other ~~units unit~~ of local government which ~~are is~~ created either by statute or by the Constitution of North Dakota for local government or other public purposes.
5. "Public employee" means ~~any person~~ an individual employed by ~~the a~~ state ~~agency~~ or any of its political subdivisions ~~subdivision~~, an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include ~~a person an individual~~ employed by an occupational and professional board or commission under title 43 or by the state bar association.

6. "Public official" means ~~any~~ an elected or appointed officer or deputy, ~~either elected or appointed, of the a state agency or any of its a political subdivisions who is required to be bonded by any law of this state subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.~~
7. "State agency" means a state departments board, bureau, commission, department, agencies agency, industries industry, and institutions institution and an the international peace garden.

SECTION 7. AMENDMENT. Section 26.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-02. State bonding fund under management of - Management by commissioner. ~~The commissioner shall manage the fund. The A fund must be maintained as a fund for the bonding of public employees and public officials. All moneys Money collected under this chapter must be paid into such the fund. The commissioner shall manage the fund.~~

SECTION 8. AMENDMENT. Section 26.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-03. Commissioner may employ assistants. The commissioner may employ ~~such clerical and other~~ assistants as may be necessary to operate the fund. The salaries of all employees together with all other expenditures for the operation of the fund must remain within the appropriations made ~~from time to time~~ by the legislative assembly for ~~such these~~ purposes and must be paid by warrant-check drawn on the state treasury prepared by the office of management and budget after the approval of expense vouchers by the office of the budget.

SECTION 9. AMENDMENT. Section 26.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-04. Attorney general is attorney for fund. The attorney general shall act as attorney for the commissioner in any ~~and all actions and proceedings proceeding~~ to which the commissioner is a party on behalf of the fund.

SECTION 10. AMENDMENT. Section 26.1-21-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-06. Condition of bond created by chapter - Limitation. ~~The condition of Unless otherwise provided, the bond provided under this chapter is a blanket bond arising under the provisions of this chapter shall be limited to that of. The blanket bond is a fidelity bond and must provide that. The blanket bond is conditioned on the public employee or public official, as principal, shall render rendering a true account of all moneys and property of every kind that come into the person's hands as such possessed as a public employee or public official, and shall pay over and deliver the same according to delivering the money or the property as required by law. The provisions of this chapter and of any statute requiring a bond constitute the bond of each public official and public employee for the purposes of any law of this state requiring the bond and constitute the entire contract between the fund and a state agency or a political subdivision as the obligee for the bond.~~

SECTION 11. AMENDMENT. Section 26.1-21-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-07. Coverage. The amount of coverage afforded to each state agency, ~~department, industry, and institution~~ or political subdivision must be determined by the commissioner based upon the amount of money or property handled and the opportunity for defalcation. The coverage may be greater than but not less than the amount required by law or determined under law for ~~such positions~~ a position. The coverage for a state legislative or judicial branch agency, however, may be determined by the legislative council or supreme court, respectively.

SECTION 12. AMENDMENT. Section 26.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-08. Review of public official and employee bond coverage by auditor. Each state agency, department, industry, and institution shall annually review the amount of blanket bond coverage of its officers and employees. When conducting an audit examination of ~~such a state agencies, departments, industries, and institutions~~ agency or political subdivision, the state auditor shall evaluate the blanket bond coverage and, if ~~deemed~~ necessary, the auditor shall include recommendations for changes in the amount of that coverage in the auditor's report.

SECTION 13. AMENDMENT. Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09. Premiums - Amount to whom paid - Minimum. The commissioner shall determine the premium for a blanket bond must be determined by the commissioner. ~~Premiums must be paid~~ Each state agency and political subdivision shall pay the premium in advance ~~by the proper authority of the state, or of the political subdivision of the state, from its treasury,~~ to the state treasurer who shall keep the same premiums collected in the fund. The state treasurer shall issue receipts in triplicate. The treasurer shall file one of ~~such these~~ receipts in the treasurer's office, and shall mail one to the official making ~~such the~~ payment, and shall mail one to the commissioner. The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for ~~such a longer terms term as prescribed by the commissioner may prescribe. From and after July 1, 1953, the.~~ The premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two million dollars. The collection of premiums must be resumed on the bonds, at the rates provided under this section, whenever the reserve fund is depleted below the sum of two million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two million dollars.

SECTION 14. AMENDMENT. Section 26.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-10. Automatic insurance of state and political subdivisions. The public employees and public officials of the

1. Each state agency and each political subdivision thereof, as the case may be, must shall apply to be insured bonded in the fund according to the provisions of this chapter upon application to the state bonding fund and upon approval by the commissioner on a biennial basis or if a change in coverage is requested. Unless an application is denied within sixty days from the date it is received by the state bonding fund commissioner, the application will be deemed approved and bond coverage in force. The provisions of this chapter and of any statute

requiring a bond constitute the bond of each and every public official for the purpose of any law of this state requiring such bond and constitute the entire contract between the fund and the state or its political subdivisions, respectively, as the obligee in any such bond. If a bond is in the discretion of the state agency or political subdivision and a bond is not requested, the state agency or political subdivision is exempt from this section.

2. The application must include a requested amount of bond coverage based on the amount of money and property handled and the opportunity for defalcation and any other condition imposed by law and list twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on the total monthly balances. In addition, the application must include any information requested by the commissioner to determine the amount of money and property handled and the opportunity for defalcation, including the procedure used to determine the amount of bond requested, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures.

SECTION 15. AMENDMENT. Section 26.1-21-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-11. Default of public employees or public officials - ~~Duty of public officer -~~ Limitation on filing of claims against fund. ~~Immediately upon, and in no event later than~~ Within sixty days after, the discovery of any default or wrongful act on the part of any public employee or public official, for which the fund is or may become liable, the state auditor, county auditor, city auditor, township clerk, or business manager of the school district, ~~or, the treasurer of the state or state agency or political subdivision thereof, if the defaulting officer is the auditor or clerk of the state or state agency or political subdivision;~~ and any other officer having supervision of a defaulting public employee or public official, shall file a claim with the commissioner against the fund. Any person injured by ~~such a~~ default or wrongful act, ~~if that person intends to hold the fund liable therefor, shall~~ may present the claim to the commissioner within sixty days after the discovery of such default or wrongful act. If a claim is not filed within the time limited by this section, ~~such~~ the claim is waived. A claim filed under the provisions of this section must contain an abstract of the facts upon which ~~it the claim~~ is based and must be verified by the claimant or by someone in the claimant's behalf, ~~and, together with.~~ The claim and all papers relating thereto, to the claim must remain on file with the commissioner.

SECTION 16. AMENDMENT. Section 26.1-21-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-12. Commissioner to notify state auditor of default of public employee or public official - Duty of state auditor. If any public employee or public official defaults or creates a liability against the fund, the commissioner shall notify the state auditor, ~~who.~~ The state auditor immediately shall ~~check~~ investigate the accounts of ~~such~~ the public employee or public official and file a report with the commissioner stating ~~the any amount, if any,~~ due from the fund because of ~~such the~~ default or wrongful act. For such service these services, the auditor must be paid out of the fund the same fees as the auditor is paid for auditing the accounts of county officers.

SECTION 17. AMENDMENT. Section 26.1-21-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-14. Filing claim is condition precedent to bringing action - Failure to act is refusal disallowance. ~~No~~ An action may not be maintained against the fund upon ~~any a claim whatsoever~~ until the claim ~~first~~ has been presented for allowance as provided in this chapter and the ~~allowance of such~~ commissioner has refused to allow the claim ~~has been refused~~. ~~Any. A claim which~~ that has not been ~~acted upon and~~ allowed or disallowed within sixty days after its presentation for allowance ~~must be deemed to be refused~~ is disallowed. The filing and disallowance of the claim must be alleged in the complaint in any action brought ~~thereon~~ against the fund.

SECTION 18. AMENDMENT. Section 26.1-21-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-15. Limitation of time for bringing action against the fund - Interest - Limitation on time for fund liability. ~~No~~ An action may not be maintained against the fund upon any claim ~~whatsoever~~ unless ~~such the~~ action is commenced within one year after filing of the claim with the commissioner. Interest on the claim runs from the date of filing the claim with the commissioner. The liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of filing the claim with the commissioner.

SECTION 19. AMENDMENT. Section 26.1-21-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-16. Suit by party injured by default of public employee or public official - Subrogation - Right of appeal. ~~Any A person, limited liability company, or corporation~~ injured by the default or wrongful act of any public employee or public official may sue the public employee or public official ~~and to~~. To effect recovery from the fund ~~shall~~, that person must join the fund as codefendant. A judgment must be obtained against the public employee or public official to create liability upon the bond. If the judgment is obtained against the public employee or public official, ~~it the~~ judgment must specify that to the extent to which the fund is liable upon the bond of the public employee or public official, the judgment must be paid out of any money in the fund or that which may accrue to the fund. If the judgment is paid out of the fund, the fund has a right to recover and is subrogated to the right of the judgment creditor to recover against ~~such the~~ public employee or public official. ~~In The commissioner~~ may act for the fund in all proceedings to enforce ~~such the~~ right of subrogation; ~~the commissioner shall act for and in behalf of the fund, and in any action or proceeding the commissioner may appeal from any appealable an order or from any judgment against the fund the same as other parties to civil actions may appeal.~~

SECTION 20. AMENDMENT. Section 26.1-21-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-17. Allowed liability claims payable from fund - Administrative expenses - Methods of payment. ~~All liability claims which are A claim~~ allowed against the fund must be paid upon warrants drawn upon the state treasurer against the fund. ~~Such warrants~~ The warrant must be prepared by the office of management and budget pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund must be made within the limitations of legislative appropriations upon warrant-checks prepared by the office of management and budget after the approval of vouchers by the commissioner.

SECTION 21. AMENDMENT. Section 26.1-21-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-18. Commissioner may make examinations - Request for accounting - Reporting defaulting official to governor. If the commissioner ~~is of the opinion at any time~~ determines that the interests of the fund are jeopardized by the misconduct or inefficiency of any public official, the commissioner shall ~~make, or~~ request the state auditor to make, an examination, and, if necessary, shall cause an action for an accounting to be instituted against ~~such~~ the public official for the purpose of requiring a complete disclosure of the business of the office of which ~~such~~ the public official is an incumbent. ~~Such~~ The action must be brought in the name of the commissioner as plaintiff, and the court in ~~such~~ the action may interplead all concerned parties ~~concerned. Whenever the.~~ The commissioner ~~deems it advisable, the commissioner shall~~ may make a complaint to the governor requesting the governor to institute an investigation with the purpose of removing from the office any defaulting public official or any public official who so conducts the affairs of the public official's office as to endanger the fund.

SECTION 22. AMENDMENT. Section 26.1-21-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-19. Cancellation of liability of fund - When permitted - Effect. ~~The commissioner, after~~ After due investigation and if in the commissioner's judgment the interests of the fund require, the commissioner may cancel the liability of the fund for the acts of any public employee or public official; ~~such.~~ The cancellation ~~to take~~ takes effect thirty days after written notice thereof. ~~In such case, the.~~ If a public official ~~whose official's or public employee's~~ bond is canceled, ~~or the public employee whose coverage is canceled under a blanket bond, the public official or public employee may secure, at personal expense, a bond executed by a duly authorized surety company in an amount determined by the commissioner. Evidence of a surety bond purchased under this section must be filed with the commissioner.~~

SECTION 23. AMENDMENT. Section 26.1-21-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-23. Public official may furnish private bond - Premiums payable from public moneys only to fund. ~~Any person elected or appointed to office, in~~ In lieu of the bond provided for in this chapter, ~~a public officer or public employee may~~ furnish a bond issued by a duly authorized surety company in an amount determined by the commissioner, but ~~no~~ an officer or board of the state or of any political subdivision may not pay for ~~any such~~ the surety bond ~~or bonds~~ out of any public funds. Evidence of a bond purchased under this section must be filed with the commissioner.

SECTION 24. AMENDMENT. Subsection 3 of section 27-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

3. In a county in which the supreme court determines that at least five full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any

equipment, including technology-related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. ~~The bond for the clerk of district court must be set by the supreme court.~~ If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.

SECTION 25. AMENDMENT. Section 54-09-02 of 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. Receive bills and resolutions 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 and maintain records of all conveyances made to the state and all articles of incorporation filed in the secretary of state's office.
5. ~~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- 6. 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- 6. 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- 7. Keep 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 payer, and the nature of the services in each case.
- 9- 8. 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 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.

- ~~40.~~ 9. 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.
- ~~44.~~ 10. Keep records of cities as prescribed by law.
- ~~42.~~ 11. Indicate on each bill passed by the legislative assembly the date of filing in the secretary of state's office.
- ~~43.~~ 12. Perform all other duties as are prescribed by law.

SECTION 26. REPEAL. Section 4-27-10 of the North Dakota Century Code is repealed.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 262

HOUSE BILL NO. 1066

(Representatives Drovdal, Bellew, Kempenich)
(Senator Fischer)

GAME AND FISH AGENT BONDS

AN ACT to amend and reenact section 26.1-21-09.1 of the North Dakota Century Code, relating to premiums for and coverage of bonds of agents appointed to distribute hunting and fishing licenses or stamps.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-21-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or stamps - Premiums - Determination of eligibility. The annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars ~~for each five thousand dollars of coverage~~. The premium must be paid to the fund pursuant to rules adopted by the commissioner. The commissioner shall deposit the premiums with the state treasurer to the credit of the fund. The commissioner may reduce or waive the premium if it is determined that funds received pursuant to this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner shall determine the conditions and qualifications of agents bonded under this section. The amount of coverage afforded under this section is ~~five thousand dollars, ten thousand dollars, or fifteen thousand dollars per agent per year as determined by the county auditor.~~

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 263

HOUSE BILL NO. 1116

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

BOILER INSPECTION

AN ACT to amend and reenact sections 26.1-22.1-08 and 26.1-22.1-10 of the North Dakota Century Code, relating to qualifications of inspectors and the time period for which certificates of inspection of the boiler inspection program are effective for steam traction engines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-08. Special inspector.

1. Upon written request of ~~the~~ an employer, the commissioner may appoint as a special inspector ~~an inspector in the employ of any;~~
 - a. An insurance company authorized to insure boilers in this state against loss from explosion or any self-insured;
 - b. A company that has employees for the purpose of inspecting its own boilers in this state qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
- ~~No~~ A person may not be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
2. ~~Every~~ An inspection ~~made~~ performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the commissioner in the time, manner, and form as prescribed by the commissioner.
3. If a complete report is not filed by the special inspector's employer with the commissioner within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless ~~extensions~~ an extension of time ~~are~~ is granted by the chief boiler inspector. ~~For that inspection, the insurance company or self-insured company shall~~ The special inspector's employer must pay all appropriate the inspection fees in accordance with as required by section 26.1-22.1-09 for a special inspection.
4. The chief boiler inspector may inspect any boiler to which a special inspection applies.

5. The commissioner may, for cause, suspend or revoke the appointment of any special inspector.

SECTION 2. AMENDMENT. Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-10. Certificate of inspection - Certificate to be posted. The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of twenty dollars for each certificate of inspection issued as the result of inspections authorized under sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, ~~twenty-four~~ twelve months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 264

SENATE BILL NO. 2186

(Senators Espegard, Heitkamp, Klein, Mutch)
(Representatives Dietrich, Monson)

INSURANCE LOSS HISTORY INFORMATION

AN ACT to create and enact chapter 26.1-25.2 of the North Dakota Century Code, relating to personal insurance loss history information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-25.2 of the North Dakota Century Code is created and enacted as follows:

26.1-25.2-01. Scope. This chapter applies to only personal insurance.

26.1-25.2-02. Definitions. As used in this chapter:

1. "Deceptive practices" means any misstatement or omission of any material fact, or submission of a false statement, in light of the circumstances under which it was made, by a person acting with the intent to defraud in filing an insurance claim.
2. "Insurance support organization" means:
 - a.
 - (1) A person who regularly engages, in whole or in part, in the practice of assembling or collecting information about an individual for the primary purpose of providing the information to an insurance institution or insurance producer for an insurance transaction.
 - (2) The term includes the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction.
 - (3) The term also includes the collection of personal information from an insurance institution, insurance producer, or insurance support organization for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.
 - b. The following persons are not insurance support organizations:
 - (1) Insurance producers.
 - (2) Government institutions.
 - (3) Insurance institutions.
 - (4) Medical care institutions.

(5) Medical professionals.

3. "Personal insurance" means private passenger automobile, homeowner, motorcycle, mobile homeowner, and owner-occupied dwelling fire insurance policies.

26.1-25.2-03. Prohibited claims usage. An insurer may not consider the following events for purposes of surcharging, declining, nonrenewing, or canceling either personal insurance coverage or a binder for personal insurance coverage. The events include:

1. An insured's inquiry into the type or level of coverage or an inquiry into whether a policy will cover a loss;
2. An insured's inquiry regarding coverage for a loss if the insured files no claim;
3. A claim if the insurer conducts no investigation of a claim or initiates no other claim activity and the claim does not involve deceptive practices on the part of the insured;
4. A claim if the insurer makes no payment to or on behalf of the insured and the claim does not involve deceptive practices on the part of the insured;
5. A first-party property claim resulting from wind or hail if the insured had no previous wind or hail claim on that property within the previous five years regardless of the insurer unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss; or
6. A claim if the claim is over ten years old, unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss.

26.1-25.2-04. Prohibited use of prior owner's history. An insurer may not decline to insure a property not previously owned by an applicant based solely upon the loss history of a previous owner of the property, unless the insurer can provide evidence that the previous owner did not repair the damage.

26.1-25.2-05. Disclosure requirements. An insurer writing personal insurance must inform the applicant in writing or in the same medium as the application at the time of an application for personal insurance that the insurer will consider the insured's claims history in determining whether to decline, cancel, nonrenew, or surcharge a policy and that a claim incurred by the insured will be reported to an insurance support organization.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 265

HOUSE BILL NO. 1113

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE PRODUCER CONTINUING EDUCATION

AN ACT to amend and reenact subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code, relating to continuing education requirements for insurance producers and consultants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, any person licensed as an insurance producer or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than ~~fifteen~~ twenty-four hours ~~per year~~ of approved coursework, of which ~~seven and one-half~~ three hours ~~per year~~ must be classroom hours in ethics. ~~The commissioner may waive the requirement of seven and one-half hours per year of classroom hours.~~ The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any person having a license limited to a specific product type. ~~The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit.~~ Credit for courses attended in any one year over the minimum number of hours of coursework required, ~~not to exceed twelve hours~~, may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each two-year period following licensure. No continuing education is required of an insurance producer who is at least sixty-two years of age and who has a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 266**HOUSE BILL NO. 1112**

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE PRODUCER BUSINESS ACCEPTANCE

AN ACT to amend and reenact section 26.1-26-36 of the North Dakota Century Code, relating to a surplus lines insurance producer's authority to accept business from a nonadmitted company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-36 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-36. Surplus lines insurance producer's authority. A surplus lines insurance producer may act as a surplus lines insurance producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance producer may accept business from any licensed insurance producer for ~~an admitted~~ a nonadmitted company and may compensate the insurance producer for the business, provided the insurance is written in conformity with this title.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 267

HOUSE BILL NO. 1178

(Representatives Maragos, N. Johnson)
(Senator Krebsbach)

BAIL BOND AGENTS

AN ACT to amend and reenact sections 26.1-26.6-01, 26.1-26.6-02, 26.1-26.6-03, 26.1-26.6-04, 26.1-26.6-05, 26.1-26.6-06, 26.1-26.6-07, 26.1-26.6-08, and 26.1-26.6-09 of the North Dakota Century Code, relating to bail bond agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.6-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-01. Definition. As used in this chapter, unless the context otherwise requires, "bail bondsman bail bond agent" means any person who has been approved licensed by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.

SECTION 2. AMENDMENT. Section 26.1-26.6-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-02. Licensing and continuing education requirements. The licensing and continuing education requirements under chapter 26.1-26 apply to bail ~~bondsman~~ bond agents.

SECTION 3. AMENDMENT. Section 26.1-26.6-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-03. Persons disqualified as bail ~~bondsman~~ bond agents - Penalty. The following persons or classes may not be bail ~~bondsman~~ bond agents and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs and constables, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor.

SECTION 4. AMENDMENT. Section 26.1-26.6-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-04. Qualification and license as bail ~~bondsman~~ bond agent - Pledge of property as security - Penalty. No A person may not act in the capacity of a bail ~~bondsman~~ bond agent or perform any of the functions, duties, or powers prescribed for a bail ~~bondsman~~ bond agent under the provisions of this chapter unless that person is qualified and licensed as provided in this chapter. However, none of the provisions of this section does not prohibit any individual from pledging real or other property as security for a bail bond in judicial proceedings if the person individual does not receive, or is not promised, money or other things of value therefor. Violation of this section is a class B misdemeanor.

SECTION 5. AMENDMENT. Section 26.1-26.6-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-05. Violations - Penalties.

1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
 - a. Recommending any particular attorney at law to handle the case in which the bail ~~bondsman~~ bond agent has caused a bond to be issued under ~~the terms of this chapter~~.
 - b. Forging the name of another to a bond or application for bond.
 - c. Soliciting business in or about any place for prisoners or confined, arraigned, or in custody.
 - d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer or officer of the law, or any other person who has power to arrest or hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or entreatment thereof, or to secure, delay, or other advantage. This subdivision does not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.
 - e. Paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond.
 - f. Accepting anything of value from a principal other than a premium. Provided, the ~~bondsman~~ bail bond agent may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond. Such collateral security or other indemnity required by the ~~bondsman~~ bail bond agent must be reasonable in relation to the amount of the bond.
 - g. ~~Willful failure~~ Willfully failing to return collateral security to the principal when the principal is entitled ~~thereto~~ to the security.
 - h. Knowingly employing a person whose insurance producer license has been revoked, suspended, or denied in this or any other state.
 - i. Knowingly or intentionally executing a bail bond without collecting in full a premium ~~therefor for the bond~~, at the premium rate as filed with and approved by the commissioner.
 - j. Failing to pay any forfeiture as directed by a court and as required by this ~~title~~ chapter.
2. A bail ~~bondsman~~ bond agent or bail bond agency may not advertise as or hold itself out to be a surety company.

3. A bail ~~bondsman~~ bail bond agent may not sign nor countersign any blank in any bond, nor give up power of attorney to or otherwise authorize, anyone to countersign the bail ~~bondsman's~~ bond agent's name to bonds.
4. When a ~~bondsman~~ bail bond agent accepts collateral, the ~~bondsman~~ bail bond agent shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The ~~bondsman~~ bail bond agent shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.
5. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

SECTION 6. AMENDMENT. Section 26.1-26.6-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-06. Access to jails. Every person who holds a valid bail ~~bondsman~~ bail bond agent license issued by the insurance commissioner is entitled to equal access to the jails of the state for the purpose of making bond, subject to the provisions of this chapter and the rules adopted in the manner provided by law. Jail personnel, law enforcement officers, and court personnel may not suggest, recommend, advise, or promote a particular ~~bondsman~~ bail bond agent. Each jail shall furnish a space convenient to the telephones in the booking area to be used to hold business cards of ~~bondsmen~~ bail bond agents.

SECTION 7. AMENDMENT. Section 26.1-26.6-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-07. Surrender of defendant prior to breach. At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or ~~bondsman~~ bail bond agent may surrender the defendant, or the defendant may surrender, to the official to whose custody the defendant would have been given had the defendant been committed. The defendant may be surrendered without the return of premium for the bond if the defendant has been guilty of nonpayment of premium, changing address without notifying the ~~bondsman~~ bail bond agent, self-concealment, or leaving the jurisdiction of the court without the permission of the ~~bondsman~~ bail bond agent, or of violating the defendant's contract with the ~~bondsman~~ bail bond agent in any way that does harm to the ~~bondsman~~ bail bond agent, or the surety, or violates the obligation to the court. For the purpose of surrendering the defendant, the surety may arrest the defendant before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor.

SECTION 8. AMENDMENT. Section 26.1-26.6-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-08. Maximum commission or fee. A ~~professional bondsman~~ bail bond agent may not charge a premium, commission, or fee for a bond in an amount more than ten percent of the amount of bail furnished by the ~~bondsman~~ bail bond agent, or seventy-five dollars, whichever is greater.

SECTION 9. AMENDMENT. Section 26.1-26.6-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-09. Failure to appear. If a defendant fails to appear for a scheduled court appearance, the clerk of court shall notify the ~~bondsman~~ bail bond agent. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court, the ~~bondsman may petition~~ bail bond agent may petition the court for a return of the forfeiture. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court within six months of receiving notice of the failure to appear, the court shall return at least fifty percent of the forfeiture upon petition by the ~~bondsman, less five percent for court costs~~ bail bond agent. If the ~~bondsman~~ bail bond agent returns the defendant to the jurisdiction of the court beyond six months of receiving notice of the failure to appear, the court may return the forfeiture upon receipt of a petition from the ~~bondsman~~ bail bond agent, less five percent for court costs.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 268

SENATE BILL NO. 2187

(Senators Krebsbach, Grindberg, Schobinger)
(Representatives Carlson, Price, Ruby)

THIRD-PARTY ADMINISTRATORS

AN ACT to create and enact section 26.1-27-03.1 of the North Dakota Century Code, relating to bond requirements for third-party administrators; to amend and reenact section 26.1-27-03 of the North Dakota Century Code, relating to fees for acting as a third-party administrator and the penalties for acting without a third-party administrator license; to repeal section 26.1-27-04 of the North Dakota Century Code, relating to the waiver of third-party registration requirements; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-27-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27-03. Certificate of ~~registration~~ authority required - Penalty.

1. ~~No~~ A person, including a person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health coverage provided by a self-funded plan, may not act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a certificate of ~~registration~~ authority issued by the commissioner. Any person violating this subsection is guilty of a class ~~B misdemeanor~~ C felony.
2. All applications must be accompanied by a filing fee of ~~twenty-five~~ one hundred dollars.
3. The commissioner shall issue a certificate unless the commissioner after due notice and hearing determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.
4. The administrator shall pay an annual renewal fee of ~~twenty-five~~ fifty dollars to maintain the certificate.
5. After notice and hearing, the commissioner may revoke a certificate or fine the administrator not more than ten thousand dollars, or both, or the commissioner may suspend a certificate, or fine the administrator not more than five thousand dollars, or both, upon finding that either the administrator violated section 26.1-27-05 and subsection 4 of section 26.1-27-06 and also violated subsection 1, 2, or 3 of section 26.1-27-06 or section 26.1-27-07, 26.1-27-08, 26.1-27-10, 26.1-27-11, or 26.1-27-12, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

SECTION 2. Section 26.1-27-03.1 of the North Dakota Century Code is created and enacted as follows:

26.1-27-03.1. Bond or insurance requirement. An administrator that administers or will administer self-insured plans in this state shall maintain a surety bond or proof of insurance satisfactory to the commissioner for the use and benefit of the commissioner for covered persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the greater of the following amounts:

1. One hundred thousand dollars; or
2. Ten percent of the aggregate total amount of administered coverage under the plans handled in this state.

SECTION 3. REPEAL. Section 26.1-27-04 of the North Dakota Century Code is repealed.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 269

HOUSE BILL NO. 1332

(Representatives N. Johnson, Devlin, Keiser, Price)
(Senators Fischer, J. Lee)

PHARMACY BENEFITS MANAGEMENT REGULATION

AN ACT to create and enact a new section to chapter 26.1-27 and chapter 26.1-27.1 of the North Dakota Century Code, relating to regulation of pharmacy benefits management; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-27 of the North Dakota Century Code is created and enacted as follows:

Pharmacy benefits manager. A pharmacy benefits manager, as defined under section 26.1-27.1-01, is an administrator for purposes of this chapter.

SECTION 2. Chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

26.1-27.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include a self-funded plan that is exempt from state regulation pursuant to the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.]; a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care, or other limited-benefit health insurance policy or contract.
2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a policyholder, or a beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual.
3. "De-identified information" means information from which the name, address, telephone number, and other variables have been removed in accordance with requirements of title 45, Code of Federal Regulations, part 164, section 512, subsections (a) or (b).
4. "Generic drug" means a drug that is chemically equivalent to a brand name drug for which the patent has expired.

5. "Labeler" means a person that has been assigned a labeler code by the federal food and drug administration under title 21, Code of Federal Regulations, part 207, section 20, and that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.
6. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:
 - a. A rebate collected by the pharmacy benefits manager which is allocated to a covered entity;
 - b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
 - c. A pharmacy network fee; and
 - d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.
7. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:
 - a. Claims processing, retail network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;
 - b. Clinical formulary development and management services; or
 - c. Rebate contracting and administration.
8. "Pharmacy benefits manager" means a person that performs pharmacy benefits management. The term includes a person acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity. The term does not include a public self-funded pool or a private single-employer self-funded plan that provides benefits or services directly to its beneficiaries. The term does not include a health carrier licensed under title 26.1 if the health carrier is providing pharmacy benefits management to its insureds.
9. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.
10. "Utilization information" means de-identified information regarding the quantity of drug prescriptions dispensed to members of a health plan during a specified time period.

26.1-27.1-02. Licensing. A person may not perform or act as a pharmacy benefits manager in this state unless that person holds a certificate of registration as an administrator under chapter 26.1-27.

26.1-27.1-03. Disclosure requirements.

1. A pharmacy benefits manager shall disclose to the commissioner any ownership interest of any kind with:
 - a. Any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the pharmacy benefits manager provides services.
 - b. Any parent company, subsidiary, or other organization that is related to the provision of pharmacy services, the provision of other prescription drug or device services, or a pharmaceutical manufacturer.
2. A pharmacy benefits manager shall notify the commissioner in writing within five business days of any material change in the pharmacy benefits manager's ownership.

26.1-27.1-04. Prohibited practices.

1. A pharmacy benefits manager shall comply with chapter 19-02.1 regarding the substitution of one prescription drug for another.
2. A pharmacy benefits manager may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract. The pharmacy benefits manager may not exclude an otherwise qualified pharmacist or pharmacy from participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract.

26.1-27.1-05. Contents of pharmacy benefits management agreement - Requirements.

1. A pharmacy benefits manager shall offer to a covered entity options for the covered entity to contract for services that must include:
 - a. A transaction fee without a sharing of a payment received by the pharmacy benefits manager;
 - b. A combination of a transaction fee and a sharing of a payment received by the pharmacy benefits manager; or
 - c. A transaction fee based on the covered entity receiving all the benefits of a payment received by the pharmacy benefits manager.
2. The agreement between the pharmacy benefits manager and the covered entity must include a provision allowing the covered entity to have audited the pharmacy benefits manager's books, accounts, and records, including de-identified utilization information, as necessary to confirm that the benefit of a payment received by the pharmacy benefits manager is being shared as required by the contract.

26.1-27.1-06. Examination of insurer-covered entity.

1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the payment received by the pharmacy benefits manager which the covered entity received from the pharmacy benefits manager has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.
2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the payment received by the pharmacy benefits manager received under any contract with a pharmacy benefits manager and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.
3. Any information disclosed to the commissioner under this section is considered a trade secret under chapter 47-25.1.

26.1-27.1-07. Rulemaking authority. The commissioner shall adopt rules as necessary before implementation of this chapter.

SECTION 3. PHARMACY BENEFITS MANAGEMENT INDUSTRY - LEGISLATIVE COUNCIL STUDY. The legislative council shall study, during the 2005-06 interim, the pharmacy benefits management industry, including the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for the consumer; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales and manufacturers rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and consideration of the legality of imposing statutory restrictions on pharmacy benefits managers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved May 4, 2005
Filed May 4, 2005

CHAPTER 270

HOUSE BILL NO. 1208

(Representatives Carlson, Horter, Price)
(Senators Brown, Fischer, J. Lee)

HEALTH SAVINGS ACCOUNTS

AN ACT to amend and reenact subdivision d of subsection 2 of section 26.1-36-08 and paragraph 4 of subdivision f of subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to excluding high-deductible health plans from mental health and substance abuse mandates in order to meet federal requirements for tax qualification of health savings accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 2 of section 26.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section in any calendar year, provided 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 the treatment services are provided within the scope of licensure by a licensed addiction counselor. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits. The deductible limitation of this subdivision does not apply to a high-deductible health plan used to establish a health savings account pursuant to and as defined in section 223 of the Internal Revenue Code [26 U.S.C. 223].

SECTION 2. AMENDMENT. Paragraph 4 of subdivision f of subsection 2 of section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

- (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. The deductible limitation of this paragraph does not apply to a high-deductible health plan used to establish a health savings account pursuant to and as defined in section 223 of the Internal Revenue Code [26 U.S.C. 223].

CHAPTER 271

SENATE BILL NO. 2282

(Senators Brown, Heitkamp, Lyson)

(Representatives Nelson, Price)

INSURANCE INDEPENDENT EXTERNAL REVIEW

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to accident and health insurance issuer independent external review requirements.

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:

Independent external review. Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 272

SENATE BILL NO. 2094

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE TERRORISM EXCLUSION

AN ACT to amend and reenact section 26.1-39-06 of the North Dakota Century Code, relating to excluding commercial insurance coverage for loss by fire or other perils caused directly or indirectly by terrorism; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-39-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-06. Standard fire insurance policy. No fire insurance contract or policy, including a renewal, may be made, issued, used, or delivered by any insurer or by any insurance producer or representative of the insurer on property in this state other than such as conform in all particulars as to blanks, size of type, context, provisions, agreements, and conditions with the 1943 standard fire insurance policy of the state of New York, a copy of which must be filed in the office of the commissioner as the standard policy for this state. The cancellation provisions contained in the standard policy are superseded to the extent sections 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different provision, agreement, condition, or clause may be made a part of the contract or policy or be endorsed on the contract or policy or delivered with the contract or policy, except as follows:

1. The name of the insurer, its location and place of business, the date of its incorporation or organization, and the state or county under which the insurer is organized, the amount of paid-up capital stock, whether it is a stock or mutual company, the names of its officers, the number and the date of the policy, and appropriate company emblems may be printed on policies issued on property in this state; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.
2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions may not be inconsistent with or a waiver of any of the provisions or conditions of the standard policy, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of contracts, supplemental contracts, or endorsements, by which the interest in the property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions and stipulations inconsistent with the standard policy if applicable only

to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies any provision which it is required by law to insert in the policies if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.
4. A commercial insurance policy providing coverage for fire insurance in accordance with this section may exclude coverage for loss by fire insured against if the fire is caused directly or indirectly by terrorism.
5. There may be endorsed in writing on the outside of any policy the name, with the word "Producer or Producers" and place of business, of any insurance producer or producers. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.
- ~~5.~~ 6. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.
- ~~6.~~ 7. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.
- ~~7.~~ 8. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.
- ~~8.~~ 9. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or proportion of the loss than the ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.
- ~~9.~~ 10. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.

- ~~40.~~ 11. This section does not apply to inland marine, ocean marine, or automobile insurance.

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

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 273

SENATE BILL NO. 2096

(Transportation Committee)

(At the request of the Insurance Commissioner)

AUTOMOBILE WARRANTY CONTRACTS

AN ACT to amend and reenact section 26.1-40-18 of the North Dakota Century Code, relating to automobile warranty contracts and requirements relating to contractual liability insurance for warranty providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-40-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-18. Automobile warranties construed.

1. An automobile dealer or a third-party administrator who issues an automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the dealer's or administrator's contractual obligation.
2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
 - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile;
or
 - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.

Approved April 19, 2005

Filed April 20, 2005

CHAPTER 274

SENATE BILL NO. 2047

(Legislative Council)
(Transportation Committee)

NO-FAULT INSURANCE MODIFICATIONS

AN ACT to amend and reenact sections 23-12-14, 26.1-41-01, 26.1-41-09, 26.1-41-11, and 26.1-41-12 of the North Dakota Century Code, relating to medical records and no-fault motor vehicle insurance; and to repeal section 26.1-41-17 of the North Dakota Century Code, relating to equitable allocation of losses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a free copy of a patient's health care records to a health care 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 health care to another health care provider for the continuation of treatment.
2. Except as provided in subsection 1, upon the request for medical records with the signed authorization of the patient, the health care provider shall provide medical records at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.

SECTION 2. AMENDMENT. Section 26.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-01. Definitions. As used in this chapter:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and excluding injury as the result of an individual entering or alighting from a stopped motor vehicle if the injury is not caused by another motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.
2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident may not exceed thirty thousand dollars, regardless of the number of persons

entitled to the benefits or the number of basic no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors' income loss, or three thousand five hundred dollars for funeral, cremation, and burial expenses.

3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Bus" means:
 - a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
 - b. Any motor vehicle owned by a charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.
 - c. Any motor vehicle owned by a political subdivision and operated as part of a public transit system in which all or a portion of the costs of operation are subsidized by the political subdivision or the federal government.
5. "Dependent survivors" means the surviving spouse of a deceased injured person if residing in the deceased's household at the time of the deceased's death, and other persons receiving support from the deceased injured person at the time of the deceased's death which would qualify them as dependents of the deceased for federal income tax purposes under the federal Internal Revenue Code. The dependency of a surviving spouse terminates upon remarriage.
6. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
7. "Economic loss" means medical expenses, rehabilitation expenses, work loss, replacement services loss, survivors' income loss, survivors' replacement services loss, and funeral, cremation, and burial expenses.
8. "Injured person" means a person an individual who sustains accidental bodily injury.
9. "Medical expenses" means reasonable usual and customary charges incurred for reasonable and necessary medical, surgical, diagnostic, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care ~~rendered in accordance with a recognized religious healing method. Medical expenses do.~~ Usual and customary charges do not include that:
 - a. The portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.

- b. Charges for drugs sold without a prescription.
 - c. Charges for experimental treatments.
 - d. Charges for medically unproven treatments.
10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
 11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
 12. "Occupying" means to be in or upon a motor vehicle ~~or engaged in the immediate act of entering into or alighting from the motor vehicle.~~
 13. "Operation of a motor vehicle" means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining a motor vehicle ~~vehicles vehicle~~ unless the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying ~~it~~ the motor vehicle.
 14. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a security agreement with the debtor having the right to possession, a lease with an option to purchase with the lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.
 15. "Pedestrian" means any ~~person~~ individual not occupying any vehicle designed to be driven or drawn by power other than muscular power.
 16. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
 17. "Relative" means any of the following residing in the same household as the owner: ~~a person~~ an individual related to the owner by blood, marriage, or adoption, or a foster child. ~~A person~~ An individual resides in the same household if that ~~person~~ individual usually makes a home in the same family unit, even though temporarily living elsewhere.

18. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had the injured person not been injured, not for income but for the benefit of the injured person or the injured person's household. Replacement services loss does not include any loss after the death of an injured person.
19. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
20. "Secured person" means the owner, operator, or occupant of a secured motor vehicle, and any other person legally responsible for the acts or omissions of the owner, operator, or occupant.
21. "Serious Injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of two thousand five hundred dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the ~~average~~ reasonable usual and customary charge for the service in this state is deemed to have sustained a serious injury if a court determines that the ~~fair and reasonable~~ usual and customary value of the services exceeds two thousand five hundred dollars.
22. "Survivors' income loss" means loss sustained after an injured person's death by dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work the decedent would normally have performed had the decedent not died.
23. "Survivors' replacement services loss" means expenses, not to exceed fifteen dollars per day after the injured person's death, by dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services the decedent would have performed not for income but for the benefit of the decedent's household.
24. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of disability would have performed had the person not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work that the injured person was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

SECTION 3. AMENDMENT. Section 26.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-09. Payment of basic and optional excess no-fault benefits.

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or dependent survivors or incurred on the injured person's behalf by the injured person's spouse,

relatives, or guardian. A basic no-fault insurer may pay basic or optional excess no-fault benefits when due to the above persons who it believes have sustained or incurred the economic loss or at its option to the person rendering, for a charge, the services for which the benefits are payable. If the injured person dies, a basic no-fault insurer may pay the benefits due directly to those entitled to the benefits without the appointment of a personal representative and unless a court directs otherwise, may pay all benefits for survivors' income loss or replacement services loss to the surviving spouse for the use and benefit of all dependent survivors. A basic no-fault insurer's payments made in good faith in accordance with this chapter discharges its liability to the extent of the payments unless the basic no-fault insurer has been notified in writing of the claim of some other person prior to the making of any of the payments.

2. Basic and optional excess no-fault benefits are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained, except that the basic no-fault insurer may accumulate claims for periods not exceeding one month, and the benefits are not overdue if paid within twenty days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after the proof is received by the basic no-fault insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after proof is received by the basic no-fault insurer. Payment is deemed made on the date of mailing. All overdue payments must bear interest at the judgment rate of eighteen percent per annum allowed in section 28-20-34.
3. Neither the injured person nor a basic no-fault insurer is required to pay for services billed more than one hundred eighty days after the date of treatment.

SECTION 4. AMENDMENT. Section 26.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-11. Mental and physical examinations.

1. Whenever the mental or physical condition of ~~a person~~ an individual is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the ~~person~~ individual shall submit to mental or physical examination by a physician designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.
2. If an individual refuses to submit to a mental or physical examination, a court at the request of the insurer may enter an order requiring the individual to submit to the examination. If the court finds that the individual failed to appear for the examination without good cause, the court shall order the insured to reimburse the insurer for any reasonably demonstrable cancellation charges for the examination.

SECTION 5. AMENDMENT. Section 26.1-41-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-12. Discovery of facts about an injured person.

1. Every employer or claimant, if a written request is made by a basic no-fault insurer against whom a claim has been made, shall furnish forthwith, in a form approved by the insurance commissioner, a sworn statement of the earnings, since the time of the accidental bodily injury and for a twelve-month period before the injury, of the ~~person~~ individual upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, if requested in writing to do so by the basic no-fault insurer against whom the claim has been made, shall:
 - a. Promptly furnish a written report of the history, condition, treatment, and dates and costs of treatment.
 - b. Permit the inspection and copying of its records regarding the history, condition, treatment, and dates and costs of treatment.
 - c. Promptly furnish autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.
4. A person may not charge more than twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five pages for providing a copy of medical records provided to a basic no-fault insurer pursuant to this chapter. This charge includes any administrative fee, retrieval fee, and postage expense.

SECTION 6. REPEAL. Section 26.1-41-17 of the North Dakota Century Code is repealed.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 275

HOUSE BILL NO. 1376

(Representatives Price, Kreidt, Nottestad, Weisz)
(Senators Brown, Dever)

DISCOUNT MEDICAL PLAN AND CARD MARKETERS

AN ACT to create and enact chapter 26.1-53 of the North Dakota Century Code, relating to duties of providers and marketers of discount medical plans and cards; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-53 of the North Dakota Century Code is created and enacted as follows:

26.1-53-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Discount medical plan" means any card, program, device, or mechanism that is not insurance which purports to offer discounts or access to discounts from a provider without recourse to the discount medical plan.
2. "Discount medical plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides access for plan members to a discount medical plan.
3. "Marketer" means a person that markets, promotes, sells, or distributes a discount medical plan.
4. "Medical services" means any care, service, or treatment of illness or dysfunction of, or injury to, the human body, including physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and laboratory services. The term does not include pharmaceutical supplies or prescriptions.
5. "Member" means any person that pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount medical plan.
6. "Provider" means any person that is contracted, directly or indirectly, with a discount medical plan organization to provide medical services to members.
7. "Provider network" means a person that negotiates on behalf of more than one provider with a discount medical plan organization to provide medical services to members.

26.1-53-02. Prohibited activities of a discount medical plan organization or marketer. A discount medical plan organization may not:

1. Use in its advertisements, marketing material, brochures, and discount cards the term "insurance" except as otherwise provided under this chapter.
2. Use in its advertisements, marketing material, brochures, and discount cards the terms "health plan", "coverage", "copay", "copayments", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead a person into believing the discount medical plan is insurance.
3. Pay providers any fees for medical services, unless the organization is an authorized third-party administrator.

26.1-53-03. Disclosures.

1. A discount medical plan organization or marketer shall disclose clearly and conspicuously in writing to any prospective member and on any advertisements, marketing materials, or brochures relating to a discount medical plan:
 - a. That the plan is not an insurance policy.
 - b. That the plan provides discounts at certain health care providers for medical services.
 - c. That the plan member is obligated to pay for all health care services but will receive a discount from those health care providers that have contracted with the discount medical plan organization.
 - d. The name, address, and telephone number of the discount medical plan organization and the marketer.
 - e. The cancellation and refund rights provided under section 26.1-53-08.
2. Any advertisements, marketing materials, or brochures relating to a discount medical plan which are transmitted to the public through the internet or television must state that the plan is not an insurance policy and that the plan provides discounts at certain health care providers for medical services.
3. The discount medical plan organization or marketer in solicitations conducted through telemarketing shall disclose orally to prospective members the required disclosures provided under subsection 1.

26.1-53-04. Provider agreements.

1. All providers offering medical services to members under a discount medical plan shall provide such services pursuant to a written agreement with the discount medical plan organization. The agreement may be entered directly by the provider or by a provider network to which the provider belongs.
2. A provider agreement must provide the following:

- a. A list of the services and products to be provided at a discount.
 - b. The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates.
 - c. That the provider will not charge members more than the discounted rates.
3. A provider agreement between a discount medical plan organization and a provider network must require that the provider network have written agreements with the provider network's providers which:
 - a. Comply with subsection 2.
 - b. Authorize the provider network to contract with the discount medical plan organization on behalf of the provider.
 - c. Require the provider network to maintain an up-to-date list of the provider network's contracted providers and to provide that list on a quarterly basis to the discount medical plan organization.
4. The discount medical plan organization shall maintain a copy of each active provider agreement and provide copies of the agreements to the commissioner, upon written request.

26.1-53-05. Provider name listing. Each discount medical plan organization shall maintain an up-to-date list of the names and addresses of the providers with which the discount medical plan organization has contracted, and the discounts provided by those providers, on a web site on the internet, the address of which must be prominently displayed on all the discount medical plan organization advertisements, marketing materials, brochures, and discount cards. This section applies to those providers with which the discount medical plan organization has contracted directly, as well as those that are members of a provider network with which the discount medical plan organization has contracted.

26.1-53-06. Marketing of discount medical plans.

1. All advertisements, marketing materials, brochures, and discount cards used by marketers must be approved in writing for such use by the discount medical plan organization.
2. The discount medical plan organization must have an executed written agreement with a marketer before the marketer's marketing, promoting, selling, or distributing the discount medical plan.

26.1-53-07. Disclosure of bundling of discount medical plans with insurance products. If a marketer or discount medical plan organization solicits, markets, or sells a discount medical plan together with any insurance product, the marketer or organization shall disclose clearly and conspicuously that the plan is not insurance.

26.1-53-08. Cancellation and refunds.

1. A discount medical plan shall permit members to cancel at any time. If cancellation occurs within thirty days of the member receiving written notice of cancellation rights, the discount medical plan shall provide

within thirty days of notice of cancellation a full refund to the canceling member, except for a nominal fee associated with the enrollment cost up to a maximum of fifty dollars. In the event of cancellation of the membership by either party, if a discount medical plan charges for a time period in excess of one month, the plan shall make a pro rata refund to the member.

2. The discount medical plan organization or marketer shall provide the member with written notice of cancellation rights within ten business days of purchase. The notice of cancellation rights must be clearly and conspicuously disclosed and must include instructions for the member to cancel the plan. The instructions must be made available to the commissioner upon request.
3. Cancellation occurs when notice of cancellation is given to the discount medical plan organization or marketer.
4. Notice of cancellation is deemed given when delivered in hand, deposited in a mailbox, properly addressed and postage prepaid, or e-mailed to the e-mail address of the discount medical plan organization or marketer.

26.1-53-09. Enforcement - Powers - Remedies - Penalties. The commissioner or the attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

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

Approved April 12, 2005

Filed April 13, 2005

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 276

SENATE BILL NO. 2105

(Judiciary Committee)

(At the request of the Supreme Court)

JUVENILE SERVICES COORDINATOR REPEAL

AN ACT to repeal section 27-02-05.2 of the North Dakota Century Code, relating to the state juvenile services coordinator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 27-02-05.2 of the North Dakota Century Code is repealed.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 277**HOUSE BILL NO. 1064**

(Representatives Klemin, Sitte)

SMALL CLAIMS REMOVAL ATTORNEY'S FEES

AN ACT to amend and reenact section 27-08.1-04 of North Dakota Century Code, relating to the awarding of attorney's fees in cases removed from small claims court to district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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 the dismissal must be deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives the right to appeal to any other court from the decision of the small claims court. The defendant waives the right to appeal from the decision of the small claims court upon receiving the order for appearance as required herein, unless the defendant elects to remove the action from the small claims court to district court. If the defendant elects to remove the action to district court, the defendant must serve upon the plaintiff a notice of the removal and file with the clerk of the court to which the action is removed a copy of the claim affidavit and the defendant's answer along with the filing fee, except for an answer fee, required for civil actions. If the defendant elects to remove the action from small claims court to district court, the district court shall award attorney's fees to a prevailing plaintiff.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 278

SENATE BILL NO. 2104

(Judiciary Committee)
(At the request of the Supreme Court)

JUROR SELECTION

AN ACT to amend and reenact section 27-09.1-05.1 of the North Dakota Century Code, relating to the selection of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05.1. Selection of jurors from judicial district - Impact of natural disaster - Grounds and method for selection. The court, upon its own motion or in response to a motion by a party, 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~~ insufficient to obtain a ~~fair and impartial~~ adequate jury pool. 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. If a natural disaster impairs the selection of a sufficient number of prospective jurors in any county, the supreme court, by emergency order, may authorize the court in the affected county to obtain additional names and mailing addresses of prospective, qualified jurors from the clerk of court of an adjoining county ~~in the judicial district~~ or from the clerk of court of another county in the judicial district if a sufficient number of names and addresses is not available from the adjoining county.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 279**HOUSE BILL NO. 1486**

(Representatives Kerzman, Froelich, S. Meyer)
(Senator Krauter)

JUVENILE PLACEMENT IN TREATMENT FACILITY

AN ACT to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to placement of juveniles in in-state residential care or residential treatment facilities.

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:

In-state placement of juveniles - Exception. Except for cases in which the specific necessary treatment is unavailable in the state or cases in which the appropriate treatment or services cannot be provided in a timely manner in the state, all juveniles in need of residential treatment or residential care placement must be placed in in-state residential facilities.

Approved April 12, 2005
Filed April 13, 2005

JUDICIAL PROCEDURE, CIVIL

CHAPTER 280

SENATE BILL NO. 2199

(Senators Brown, G. Lee)

(Representatives Devlin, Klemin, Kretschmar)

EXPERT OPINION IN MEDICAL NEGLIGENCE CASES

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to expert opinion required in certain civil cases.

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 alleging professional negligence by a physician, nurse, or hospital, or nursing, basic, or assisted living facility licensed by this state based upon professional negligence or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility,~~ must be dismissed without prejudice on motion unless the ~~claimant has obtained an admissible expert opinion to support the allegation~~ plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action ~~or at such~~. The court may set a later date ~~as set by the court~~ for serving the affidavit 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 14, 2005

Filed March 14, 2005

CHAPTER 281

HOUSE BILL NO. 1188

(Representatives Weiler, Carlson, Dietrich, Potter, Wieland)
(Senator J. Lee)

REAL ESTATE BREACH OF DUTY LIMITATIONS

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to a three-year statute of limitations for an action resulting from a breach of duty with respect to a real estate transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

Action having three-year limitation. An action for recovery of damages against a person licensed under chapter 43-23 which results from a breach of duty relating to a real estate transaction must be commenced within three years after the claim for relief has accrued.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 282

SENATE BILL NO. 2181

(Senators Holmberg, Trenbeath)

JUDGMENT AFFIDAVIT OF RENEWAL

AN ACT to amend and reenact section 28-20-22 of the North Dakota Century Code, relating to a judgment affidavit of renewal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-22 of the North Dakota Century Code is amended and reenacted as follows:

28-20-22. Affidavit of renewal - Where filed - Entry. If the judgment was rendered in a court of this state, the affidavit for renewal must be filed with the clerk of court where the judgment was first docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any court where the same has been docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. The clerk of court shall immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed. ~~A copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of court where the judgment is filed, must be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.~~

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 283

SENATE BILL NO. 2302

(Senators Trenbeath, Grindberg)

(Representatives Iverson, Kretschmar, Thoreson)

POSTJUDGMENT INTEREST

AN ACT to amend and reenact section 28-20-34 of the North Dakota Century Code, relating to postjudgment interest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-34 of the North Dakota Century Code is amended and reenacted as follows:

28-20-34. Interest rate on judgments. Interest is payable on judgments ~~recovered~~ entered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum through December 31, 2005. Beginning January 1, 2006, the interest is payable at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded in any manner or form. ~~Interest~~ On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest on all judgments ~~recovered~~ entered in the courts of this state before ~~July 4, 1984~~ January 1, 2006, must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or form. Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 284

SENATE BILL NO. 2273

(Senators Nething, Espegard, Traynor)
(Representatives DeKrey, Delmore, Kretschmar)

LITIGATION BOND LIMITATION

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to limitations on bond requirements in litigation; to provide an effective date; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Limitation on bond requirements in litigation.

1. In civil litigation under any legal theory, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review must be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively may not exceed twenty-five million dollars, regardless of the amount of the judgment.
2. Notwithstanding subsection 1, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

SECTION 2. EFFECTIVE DATE. This Act becomes effective immediately upon its filing with the secretary of state.

SECTION 3. APPLICATION OF ACT. This Act applies to all actions pending or filed on or after its effective date.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 2005
Filed March 22, 2005

CHAPTER 285

HOUSE BILL NO. 1315

(Representatives DeKrey, Klein, Mueller, Nicholas)
(Senators Klein, Taylor)

REDEMPTION PERIOD TIME LIMITS

AN ACT to amend and reenact section 28-24-02 of the North Dakota Century Code, relating to redemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵² **SECTION 1. AMENDMENT.** Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser ~~within one year (six months in redemptions under subsection 1 of section 32-19.1-04)~~ after the sale on ~~by~~ paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest. The period of redemption is six months for a redemption under subsection 1 of section 32-19.1-04 and for all other redemptions the period of redemption is one year. The period of redemption begins at the time of the filing of the summons and complaint in the office of the clerk of district court or at the time of the first publication of the notice before foreclosure by advertisement, unless it is determined by the court that the mortgagee is not entitled to judgment. The final date for redemption may not be earlier than sixty days after the sheriff's sale.

Approved March 14, 2005

Filed March 14, 2005

¹⁵² Section 28-24-02 was also amended by section 2 of Senate Bill No. 2232, chapter 302.

CHAPTER 286

SENATE BILL NO. 2159

(Senator J. Lee)
(Representative Price)

MEDICAL ASSISTANCE AND CHIPS RULES

AN ACT to create and enact a new subsection to section 28-32-03 of the North Dakota Century Code, relating to interim final rules for medical assistance for needy persons and the children's health insurance program; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 28-32-03 of the North Dakota Century Code is created and enacted as follows:

The department of human services may adopt interim final rules without the finding required by subsection 2 to implement any changes necessary to simplify and align eligibility requirements of the medical assistance program described in chapter 50-24.1 and the children's health insurance program described in chapter 50-29 as much as possible and to allow for an efficient transition of cases into the electronic system used for these programs. Any interim final rules so adopted 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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 1, 2007, and after that date is ineffective.

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

Approved March 22, 2005
Filed March 22, 2005

CHAPTER 287

HOUSE BILL NO. 1421

(Representatives Bernstein, Grande, Koppelman, Skarphol)
(Senators Andrist, Wardner)

ADMINISTRATIVE RULES EFFECTIVE DATE

AN ACT to amend and reenact sections 28-32-10 and 28-32-12, subsection 2 of section 28-32-15, and sections 28-32-18 and 28-32-19 of the North Dakota Century Code, relating to the effective date, rulemaking notice, period for comments, review, and publication of administrative rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

28-32-10. Notice of rulemaking - Hearing date.

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
 - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules.

¹⁵³ Section 28-32-10 was also amended by section 1 of House Bill No. 1337, chapter 288.

The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.
3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least ~~thirty~~ twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice~~ and the date of the hearing. ~~The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.~~

SECTION 2. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Comment period. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ~~thirty~~ ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

SECTION 3. AMENDMENT. Subsection 2 of section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:
 - (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.
 - (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
 - (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
 - (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.
- b. If publication is delayed ~~due to technological problems or lack of funds~~ for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective ~~on the first day of the month after the month when~~ publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 4. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee ~~within ninety days after not later than the fifteenth day of the month before 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 rule is initially considered by the committee at~~

~~the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear.~~ The administrative rules committee 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.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee 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 administrative rules committee 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 administrative rules committee. 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 administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, 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 published by the agency to the legislative council for publication as amended, repealed, or created and. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 5. AMENDMENT. Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

28-32-19. Publication of administrative code and code supplement.

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement; ~~in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available according to the schedule of effective dates of rules in section 28-32-15.~~
 - a. The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. ~~The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
 - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
 - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the

legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules.

SECTION 6. EFFECTIVE DATE. This Act is effective for administrative rules for which notice of hearing is filed with the office of the legislative council after July 31, 2005.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 288

HOUSE BILL NO. 1337

(Representatives Boehning, Devlin, Froelich, Wieland)
(Senator G. Lee)

RULES NOTICE TO LEGISLATION SPONSORS

AN ACT to amend and reenact subsection 2 of section 28-32-10 of the North Dakota Century Code, relating to notice of administrative agency rulemaking to members of the legislative assembly who were sponsors of legislation to be implemented by the rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁴ **SECTION 1. AMENDMENT.** Subsection 2 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The agency shall mail or deliver a copy of the agency's full notice to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to each person who has made a timely request to the agency for a ~~mailed~~ copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to any person requesting a copy. The agency may charge persons who are not members of the legislative assembly for the actual cost of providing copies of the proposed rule.

SECTION 2. EFFECTIVE DATE. This Act is effective for administrative rules for which the notice of rulemaking is filed with the office of the legislative council after July 31, 2005.

Approved April 11, 2005

Filed April 12, 2005

¹⁵⁴ Section 28-32-10 was also amended by section 1 of House Bill No. 1421, chapter 287.

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 289

HOUSE BILL NO. 1288

(Representatives Klemm, Koppelman, Mueller)
(Senators Kilzer, Traynor, Warner)

DNA TESTING POSTCONVICTION MOTION

AN ACT to create and enact a new section to chapter 29-32.1 of the North Dakota Century Code, relating to the performance of DNA testing under the Uniform Post-Conviction Procedure Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-32.1 of the North Dakota Century Code is created and enacted as follows:

Motion for DNA testing not available at trial.

1. Without limitation on a court's authority to order discovery under section 29-32.1-08, a person convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the person's actual innocence if:
 - a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and
 - b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.
2. A person who makes a motion under subsection 1 must present a prima facie case that:
 - a. Identity was an issue in the trial; and
 - b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.
3. The court shall order that the testing be performed if:
 - a. A prima facie case has been established under subsection 2;
 - b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

- c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

Approved March 14, 2005

Filed March 14, 2005

UNIFORM PROBATE CODE

CHAPTER 290

SENATE BILL NO. 2057

(Senators Trenbeath, Nething)

(Representative Kretschmar)

ESTATE COLLECTION BY AFFIDAVIT

AN ACT to amend and reenact section 30.1-23-01 of the North Dakota Century Code, relating to collection of the estate of a decedent by affidavit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-23-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-23-01. (3-1201) Collection of personal property by affidavit.

1. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:
 - a. The value of the entire estate subject to distribution or succession under chapters 30.1-01 through 30.1-23, wherever located, less liens and encumbrances, does not exceed ~~fifteen~~ fifty thousand dollars.
 - b. Thirty days have elapsed since the death of the decedent.
 - c. ~~No~~ An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.
 - d. The claiming successor is entitled to payment or delivery of the property.
2. A transfer agent of any security shall change the registered ownership on the books of a corporation or limited liability company from the decedent to the successor ~~or successors~~ upon the presentation of an affidavit as provided in subsection 1.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 291

SENATE BILL NO. 2030

(Legislative Council)
(Criminal Justice Committee)

GUARDIAN AND CONSERVATOR REPORT FILING

AN ACT to amend and reenact subsection 4 of section 30.1-27-09, subsection 8 of section 30.1-28-12, and sections 30.1-28-12.1 and 30.1-29-19 of the North Dakota Century Code, relating to the filing of annual reports by guardians and conservators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 30.1-27-09 of the North Dakota Century Code is amended and reenacted as follows:

4. A guardian ~~must report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule~~ shall file an annual report with the court informing the court of the status or condition of the ward and provide a copy of the report to the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet web site.

SECTION 2. AMENDMENT. Subsection 8 of section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

8. A guardian shall ~~make written reports to file an annual report with the court at such times as the court shall require concerning the condition and affairs of the ward. The report must include:~~
 - a. ~~The name, address, and telephone number of the ward;~~
 - b. ~~The name, address, and telephone number of the guardian;~~
 - c. ~~A brief written description of the condition of the ward;~~

- d. The name and address of any person or institution having care or custody of the ward;
- e. If the guardian has authority to make residential decisions for the ward, a statement of the nature of the ward's care and of any changes or proposals for changes in the living situation of the ward;
- f. If the guardian has authority to make medical decisions, a summary of the medical treatment authorized by the guardian since the date of the last report;
- g. The guardian's plans for maintaining the well-being of the ward and facts indicating the need for continuation or cessation of the guardianship or for any increase or limitation of the powers of the guardian;
- h. A complete accounting of the financial transactions of the guardian undertaken on behalf of the ward or in connection with the guardianship; and
- i. Any other information the court may require informing the court of the status or condition of the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian shall report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet web site.

SECTION 3. AMENDMENT. Section 30.1-28-12.1 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-12.1. Reports Annual reports and accounts - Failure of guardian to file.

- 4. If a guardian fails to ~~render any file an annual report or account within the time provided by law or the order of the court as required by section 30.1-28-12~~, fails to file a report at other times as the court may direct, or fails to ~~settle the~~ provide an accounting of an estate ~~according to the order of the court~~, the court may, upon its own motion, or upon petition of any interested party, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply.

- 2- If a guardian fails, neglects, or refuses to file a report or accounting after having been cited by the court to do so, the court may, upon its own motion or upon the motion of any interested party, issue an order to show cause that the guardian be brought before the court and show why the guardian should not be held in contempt.

SECTION 4. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-19. (5-419) Accounts Annual reports and accounts. Every At least once annually and at other times as the court may direct, a conservator must file a report and account to with the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court or to the former protected person or the protected person's personal representative shall file a final report and accounting and provide a copy of the report or accounting to the protected person. The filing of the report or accounting and the acceptance by the court or clerk of district court of the report or accounting does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet web site.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 292**SENATE BILL NO. 2029**

(Legislative Council)
(Criminal Justice Committee)

SUCCESSOR GUARDIAN APPOINTMENT

AN ACT to create and enact a new section to chapter 30.1-28 of the North Dakota Century Code, relating to the appointment of a successor guardian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

Appointment of successor guardian.

1. If the appointment of a successor guardian is required, the current guardian or any interested person may file a motion with the court for the appointment of a successor guardian.
2. The motion and supporting documents must be served on the ward, the ward's guardian ad litem, and every other interested person who has made an appearance or requested notice of proceedings.
3. A notice of motion must accompany the motion and must include a statement that provides an opportunity for hearing if requested in regard to the appointment of a successor guardian.
4. If the current or former guardian serves or served as a public administrator or a corporate guardian with more than ten wards, the motion and notice of motion may be served by first-class mail. The public administrator or corporate guardian shall then provide written notice of the motion to the state office of the protection and advocacy project, along with the contact information for each ward and proposed guardian.
5. If a hearing is not requested by or on behalf of the ward listed in the notice, the court may sign an order appointing a successor guardian for that ward.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 293

SENATE BILL NO. 2167

(Senators Espegard, Trenbeath)
(Representatives Ekstrom, Klemin)

SECURITY ACCOUNT DEFINED

AN ACT to amend and reenact subsection 5 of section 30.1-31-21 of the North Dakota Century Code, relating to the definition of security account for purposes of the Uniform Probate Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 30.1-31-21 of the North Dakota Century Code is amended and reenacted as follows:

5. "Security account" means a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; an investment management or custody account with a trust company or a trust division of a bank, credit union, or any other financial institution with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

Approved March 25, 2005
Filed March 25, 2005

JUDICIAL PROOF

CHAPTER 294

HOUSE BILL NO. 1235

(Representatives Klemin, Carlisle, Monson)
(Senators Dever, Lyson, Trenbeath)

OFFENDER DNA TESTING

AN ACT to amend and reenact section 31-13-03 of the North Dakota Century Code, relating to which offenders are subject to DNA testing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 or any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. The court shall order an individual convicted after July 31, 2005, of any felony offense to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or 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 or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The sentencing court shall assess the cost of the procedure

against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund.

Approved April 11, 2005

Filed April 12, 2005

JUDICIAL REMEDIES

CHAPTER 295

HOUSE BILL NO. 1226

(Representatives Damschen, Bellew, Porter)

DEFIBRILLATOR ACQUISITION NOTICE

AN ACT to amend and reenact section 32-03.1-02.3 of the North Dakota Century Code, relating to notification to the state department of health of acquisition of an automated external defibrillator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

32-03.1-02.3. Automated external defibrillators - Requirements.

1. Except for a medical services facility or prehospital emergency medical services provider, every person who acquires an automated external defibrillator shall:
 - a. ~~Notify the department of health, upon acquisition of an automated external defibrillator, of the location of and the type of automated external defibrillator.~~
 - b. Require every individual expected to use the automated external defibrillator to receive American heart association or American red cross training in cardiopulmonary resuscitation and automated external defibrillator use or an equivalent nationally recognized course in cardiopulmonary resuscitation and automated external defibrillator use.
 - c. ~~Maintain and test the automated external defibrillator according to the manufacturer's operational guidelines.~~
 - d. ~~Establish an automated external defibrillator use protocol that provides any person who provides emergency care or treatment to an individual in cardiac arrest by using the automated external defibrillator shall contact as soon as possible an appropriate health care provider or emergency medical services provider.~~
 - e. ~~Consider recommendations of a licensed physician in establishing the training, notification, and maintenance requirements of this subsection.~~
2. Any person who in good faith and without compensation provides emergency care or emergency treatment by using an automated external defibrillator is immune from civil liability for any personal injury

resulting from the emergency care or emergency treatment and for any act or failure to act in providing or arranging further medical treatment if the person providing the emergency care or emergency treatment acted as an ordinary, reasonable, prudent person would act under the same or similar circumstances. This subsection does not apply if a personal injury results from the gross negligence or from the willful or wanton misconduct of the person providing the emergency care or emergency treatment.

3. If the requirements of subsection 1 are met, the immunity provision of subsection 2 applies to a licensed physician under subdivision ~~e~~ d of subsection 1, the person who provides the training under subdivision ~~b~~ a of subsection 1, and the person responsible for the site on which the automated external defibrillator is located.
4. This section does not limit civil liability protection provided by any other law.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 296**SENATE BILL NO. 2162**

(Senators Wardner, Trenbeath)
(Representatives Herbel, Kretschmar)

GARNISHMENT RENEWAL NOTICES

AN ACT to amend and reenact section 32-09.1-04 of the North Dakota Century Code, relating to notice of renewal of garnishment of earnings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-04. Notice before garnishment of earnings - Notice of renewal of garnishment of earnings.

1. At least ten days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: _____ Date: _____

Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$_____.

Judgment Creditor
Address

2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on wages under section 32-09.1-21, at least ten days but no more than twenty days before the expiration of the continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages under section 32-09.1-21. The notice must be served personally or by first-class mail.

Failure to serve the notice renders any subsequent garnishment void.
The notice must be in substantially the following form:

To: _____ Date: _____

Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer without any further court proceedings or notice to you. This action is a renewal of the current garnishment order for this case. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$ _____ :

Judgment Creditor
Address

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 297

HOUSE BILL NO. 1511

(Representatives Weiler, Headland, Thoreson)
(Senators Brown, Dever, Kilzer)

GARNISHMENT FEES AND JUDGMENTS

AN ACT to amend and reenact sections 32-09.1-05, 32-09.1-10, and 32-09.1-14 of the North Dakota Century Code, relating to garnishment disclosure fees and default judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-05. Service on office of management and budget - Fees. Service upon the state of North Dakota, or any state institution, department, or agency ~~thereof~~, as garnishee, may be made upon the director of the office of management and budget in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of ~~ten~~ twenty-five dollars. The fee ~~shall must~~ be paid into deposited in the state treasury.

SECTION 2. AMENDMENT. Section 32-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-10. Disclosure fees. In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of ~~ten~~ twenty-five dollars as the fee for making an affidavit of disclosure.

SECTION 3. AMENDMENT. Section 32-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-14. Default. If any garnishee who is duly summoned willfully fails to serve disclosure as required in this chapter, the court, upon proof by affidavit of the creditor, may render judgment against the garnishee for an amount not exceeding the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller, ~~but the~~. The creditor shall serve the garnishee with a copy of the affidavit and a notice of intent to take default judgment. The court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 298

SENATE BILL NO. 2378

(Senators Dever, Lyson, Syverson)
(Representatives Dosch, L. Meier, Weiler)

GARNISHMENT DISCLOSURE FORM

AN ACT to amend and reenact section 32-09.1-09 of the North Dakota Century Code, relating to the garnishment disclosure form.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-09 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-09. Disclosure. Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.
3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota)	In _____ Court
) ss.	
County of _____)	_____

Plaintiff		
vs.		

Defendant		
and		Garnishment Disclosure

Garnishee		

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On _____, _____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
 - a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.

 - b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

-
-
- c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a. If the amount is zero, skip lines d through g and enter zero on line h.
-
-
- d. Enter on the line below 25 percent of line a.
-
-
- e. Enter on the line below the lesser of line c and line d.
-
-
- f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).
-
-
- g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.
-
-
- h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.
-
-
2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.
-
-
3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.
-
-
4. Setoff. If the amount set forth on lines 1(h), 2, and 3 is zero, skip lines 5 through 8 and go to line 9. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
-
-

-
-
5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State each person's name and address and the nature of that person's claim, if known. (Any assignment of wages made by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
-
-
6. Enter on the line below the total of lines 4 and 5.
-
-
7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of lines 1(h), 2, and 3.
-
-
8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.
-
-
9. If the amount set forth on lines 1(h), 2, and 3 is zero, enter zero on the line below. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.
-
-
10. If this form was completed for the plaintiff for the immediately preceding pay period and the amount on line 9 was less than \$10.00, the answers to disclosure for the immediately preceding pay period remain in effect and the garnishee is not required to answer the questions in the garnishment disclosure for subsequent pay periods until the amount on line 9 is \$10.00 or more.
2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
3. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)
4. Worksheet:
- a. Total earnings in pay period _____

- b. Federal tax _____
- c. State tax _____
- d. FICA (social security/medicare) _____
- e. Total deductions (lines b+c+d) _____
- f. Disposable earnings (line a less line e) _____
- g. Twenty-five percent of line f _____
- h. Minimum wage exemption
(minimum wage times forty hours times
number of weeks in pay period) _____
- i. Line f less line h _____
- j. Line g or line i (whichever is less) _____
- k. Dependent exemption (twenty dollars
per dependent per week, if claimed) _____
- l. Adverse interest or setoff _____
- m. Total of lines k and l _____
- n. Line j less line m _____

Line n is the amount subject to garnishment (not to exceed 110 percent of the amount of the judgment which remains unpaid).

Signature _____
Garnishee or Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 299

SENATE BILL NO. 2265

(Senators Trenbeath, Espegard, Grindberg)
(Representatives Delmore, Klemin, Kretschmar)

STATE AND POLITICAL SUBDIVISION CIVIL LIABILITY

AN ACT to amend and reenact sections 32-12.1-02, 32-12.1-03, and 32-12.2-02 of the North Dakota Century Code, relating to civil liability of political subdivisions and the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.
2. "Commissioner" means the insurance commissioner.
3. "Employee" means any officer, employee, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated. The term does not include an independent contractor, or any person performing tasks the details of which the political subdivision has no right to control.
4. "Injury" means personal injury, death, or property damage. ~~Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.~~
5. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person, and injury to a person's rights or reputation.
6. "Political subdivision":
 - a. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.

- b. Does not include nor may it be construed to mean either the state of North Dakota or any of the several agencies, boards, bureaus, commissions, councils, courts, departments, institutions, or offices of government which collectively constitute the government of the state of North Dakota.
- 6- 7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "Public nonprofit corporation" means a nonprofit corporation that performs a governmental function and is funded, entirely or partly, by the state, a city, county, park district, school district, or township.

SECTION 2. AMENDMENT. Section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-03. Liability of political subdivisions - Limitations.

1. Each political subdivision is liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant in accordance with the laws of this state, or injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant. The enactment of a law, rule, regulation, or ordinance to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the political subdivision, its employees, or its agents, if that duty would not otherwise exist.
2. The liability of political subdivisions under this chapter is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. A political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
3. ~~A political subdivision is not liable for any claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved is abused. Specifically, a political subdivision or a political subdivision employee is not liable for any claim that results from or a political subdivision employee may not be held liable under this chapter for any of the following claims:~~
 - a. A claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation.

- b. 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, charter, ordinance, order, regulation, resolution, or resolve.
- ~~b.~~ c. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the 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.~~ d. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- ~~d.~~ The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. Injury directly or indirectly caused by a person who is not employed by the political subdivision.
- f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:

 - (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.
 - (2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.
 - (3) Providing or failing to provide law enforcement services in the ordinary course of a political subdivision's law enforcement operations.
 - (4) Providing or failing to provide fire protection services in the ordinary course of a political subdivision's fire protection operations.
- g. "Public duty" does not include action of the political subdivision or a political subdivision employee under circumstances in which a special relationship can be established between the political subdivision and the injured party. A special relationship is demonstrated if all of the following elements exist:

 - (1) Direct contact between the political subdivision and the injured party.

- (2) An assumption by the political subdivision, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.
 - (3) Knowledge on the part of the political subdivision that inaction of the political subdivision could lead to harm.
 - (4) The injured party's justifiable reliance on the political subdivision's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the political subdivision, or the political subdivision action increases the risk of harm.
- e. The failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the political subdivision has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, a political subdivision is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:
 - (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and multcentury formulas and date values; and
 - (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.

This subsection does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

- 4. This chapter does not obligate political subdivisions for an amount that is more than the limitations upon liability imposed by this chapter.

Subject to this chapter, any payments to persons constitute payment in full of any compromised claim or judgment or any final judgment under this chapter.

5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not liable for any claim arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
6. A political subdivision is not liable for any claim based on an act or omission in the designation, repair, operation, or maintenance of a minimum maintenance road if that designation has been made in accordance with sections 24-07-35 through 24-07-37 and if the road has been maintained at a level to serve occasional and intermittent traffic.

SECTION 3. AMENDMENT. Section 32-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-02. 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. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.
2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and 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 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 relating to injury directly or indirectly caused by a person who is not employed by the state.
- f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:
 - (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.
 - (2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.
 - (3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.
- g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:
 - (1) Direct contact between the state and the injured party.
 - (2) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.
 - (3) Knowledge on the part of the state that inaction of the state could lead to harm.
 - (4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

- ~~h.~~ h. A claim resulting from the assessment and collection of taxes.
- ~~f.~~ i. 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.~~ j. A claim resulting from any injury caused by a wild animal in its natural state.
- ~~h.~~ k. A claim resulting from the condition of unimproved real property owned or leased by the state.
- ~~i.~~ l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- ~~j.~~ m. 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.~~ n. A claim resulting from damage to the property of a patient or inmate of a state institution.
- ~~l.~~ o. 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.~~ p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- ~~n.~~ q. 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.~~ r. A claim for damage to property owned by the state.
- ~~p.~~ s. 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.
- ~~q.~~ A claim resulting from the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance

requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and multicentury formulas and date values; and
 - (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.
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 22, 1995.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 300

HOUSE BILL NO. 1084

(Industry, Business and Labor Committee)
(At the request of the Office of Management and Budget)

SCOPE OF EMPLOYMENT

AN ACT to amend and reenact subsection 6 of section 32-12.2-01 and subsection 2 of section 32-12.2-04 of the North Dakota Century Code, relating to the definition of scope of employment for purposes and payment of claims against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 32-12.2-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Scope of employment" means the state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law. ~~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.~~

SECTION 2. AMENDMENT. Subsection 2 of section 32-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

2. After receipt of notice of a claim, the director of the office of management and budget shall, in a timely manner, notify the head of the state entity involved, the attorney general, and any insurer or self-insurance pool providing coverage for that state entity. For claims over ~~five~~ ten 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 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~~ ten thousand dollars.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 301

SENATE BILL NO. 2250

(Senators Trenbeath, Traynor, Triplett)
(Representatives Berg, Carlson, Kretschmar)

CONTRACT LIABILITY LIMITATIONS

AN ACT to authorize agencies to limit the liability to the state of certain contracting parties and to permit ratification of certain existing agreements limiting liability to the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Contracts limiting liability to the state - Assumption of certain excess liability by the risk management fund. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, an agency may agree to limit the liability of a contractor to the state. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing and may only be approved for contracts for the purchase or lease of software, communication, or electronic equipment. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.

SECTION 2. Ratifying contracts limiting liability to the state. Any employee or official of an agency who entered into a contract prior to the effective date of this Act requiring the agency to limit the liability of the contracting party will be deemed to be acting within the scope of the employee's or official's employment provided the contract is approved or ratified by the attorney general and the director of the office of management and budget and otherwise meets the conditions contained in section 1 of this Act.

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

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 302**SENATE BILL NO. 2232**

(Senators Holmberg, Traynor, Triplett)
(Representative Kretschmar)

**MORTGAGE FORECLOSURE AND DEFICIENCY
JUDGMENTS**

AN ACT to create and enact section 32-19-06.2 of the North Dakota Century Code, relating to deficiency judgments on agricultural land; to amend and reenact sections 28-23-04, 28-24-02, 32-19-01, 32-19-03, 32-19-04, 32-19-06, 32-19-06.1, 32-19-07, 32-19-08, 32-19-09, 32-19-10, 32-19-11, 32-19-18, 32-19-20, 32-19-21, 32-19-22, 32-19-23, 32-19-24, 32-19-25, 32-19-26, 32-19-28, 32-19-29, 32-19-37, 32-19-38, 32-19-39, 32-19-40, and 32-19-41 and subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code, relating to foreclosure of a mortgage; and to repeal sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code, relating to foreclosure of a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

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

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 ~~or 32-19.1~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

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

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year ~~(six months in redemptions under subsection 1 of section 32-19-1-04)~~ after the sale on paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest.

SECTION 3. AMENDMENT. Section 32-19-01 of the North Dakota Century Code is amended and reenacted as follows:

32-19-01. Action to foreclose mortgage on real estate authorized. ~~An~~ The plaintiff shall bring an action ~~may be brought~~ in the district court for the foreclosure or satisfaction of a mortgage upon real property ~~in accordance with the provisions of this chapter.~~

SECTION 4. AMENDMENT. Section 32-19-03 of the North Dakota Century Code is amended and reenacted as follows:

32-19-03. Who subject to deficiency judgment. ~~If the mortgage debt is secured by the obligation, or other evidence of debt, of any person other than the mortgagor, the plaintiff may make such other person a party to the action and the court may render judgment for the balance of the debt remaining unsatisfied after a sale of the mortgaged premises as against such other person and may enforce such judgment as in other cases by execution or other process. Nothing elsewhere contained in this chapter shall be construed to postpone or affect any remedies the creditor may have against any person personally liable for the debt, other than the mortgagor or purchaser and the successors in interest of either. The plaintiff may not obtain a deficiency judgment in a foreclosure of residential property with four or fewer units of up to forty contiguous acres [16.19 hectares] containing a residence occupied by the owner as a homestead. The plaintiff may obtain a deficiency judgment on agricultural land of more than forty acres [16.19 hectares] but solely for the difference between the amount of the debt and the fair market value of the land at the time of commencement of the action. The plaintiff may obtain a deficiency judgment in all other cases for the difference between the appraised value, as determined by a licensed appraiser appointed by the court at the request of the plaintiff, and the amount determined due. The cost of the appraisal is an allowable cost in the foreclosure action.~~

SECTION 5. AMENDMENT. Section 32-19-04 of the North Dakota Century Code is amended and reenacted as follows:

¹⁵⁵ Section 28-24-02 was also amended by section 1 of House Bill No. 1315, chapter 285.

32-19-04. What complaint shall state. In an action for the foreclosure or satisfaction of a mortgage, the complaint shall must state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof, and if there have been, whether any and what part thereof has been collected. The plaintiff shall also state in the complaint whether the plaintiff will in a later and separate action demand judgment for any sufficient allegations to identify the mortgage being foreclosed, to establish the applicable redemption period, and to determine whether a deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage judgment will be sought and against which parties.

¹⁵⁶ **SECTION 6. AMENDMENT.** Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court may shall render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action, and may shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises sold be delivered until after the expiration of the one-year redemption period unless otherwise allowed ordered by the court pursuant to section 32-19-19. The court shall direct, and the judgment must provide, that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment; if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against

¹⁵⁶ Section 32-19-06 was also amended by section 1 of House Bill No. 1312, chapter 303.

the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 7. AMENDMENT. Section 32-19-06.1 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06.1. Deficiency judgments on commercial real property. Notwithstanding any other provision of law, a mortgagee holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after August 1, 1993, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage. In an action involving the foreclosure of a mortgage on commercial real property, the foreclosing party plaintiff shall state in its the pleading whether a deficiency judgment will be sought, and if sought shall identify the parties claimed to be personally liable for payment of the debt secured by the mortgage being foreclosed, and demand a deficiency judgment against those parties. Within ninety twenty days after the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a notice for an completion of the appraisal of the real property by a licensed or certified, the appraiser and shall provide the plaintiff and file with the clerk of court a written report, including the fair market value of the property. The plaintiff shall mail a copy of the request to the parties claimed to be liable for a deficiency; of the appraisal to a party that may be personally liable at their last known the party's last-known residences or business addresses by first-class mail. The notice must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the property. Within twenty days after completion of the appraisal, the appraiser shall provide to the foreclosing party and file with the clerk of court a written report indicating the fair market value of the commercial real property. The foreclosing party shall also mail copies of the report to the parties claimed to be personally liable to their last known residences or business addresses by first-class mail. Within fifteen days of the later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the

foreclosing party and filed within thirty days of the filing of the notice of appraisal and must be considered; with other appraisal reports filed, in the determination by the court of the fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal. At the time of the entry of the judgment, the court shall include in its findings of fact the fair market value of the property and, if the fair market value is less than the amount found to be due the foreclosing party, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment of any prior liens on the property. If the fair market value and the amount of any prior liens are less than the amount found to be due to the plaintiff. The court shall identify each person who is liable for any deficiency after the sheriff's sale. The foreclosure judgment must be in an amount equal to the balance then due and owing on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited on the foreclosure judgment, which credit must be at least the amount bid at the sheriff's sale, less the cost of the sheriff's sale as a credit on the foreclosure judgment, which credit may not in any event be less than the fair market value established by the court. However, only the Any amount actually paid in excess of the foreclosure judgment may constitute constitutes surplus payable to the debtor pursuant to section 28-23-09. At any time after the order confirming sale, the The clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party, then the plaintiff may thereafter pursue the same remedies to collect the deficiency judgment as are available to collect other money judgments. The deficiency judgment must be for the entire amount found to be due the foreclosing party in the foreclosure judgment, together with interest on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed, as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties appraisal, the court, in its determination of the fair market value of the property, may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

The provisions of this section are not available unless the obligation and mortgage upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the mortgagee has the right to proceed to obtain and collect a deficiency judgment, together with foreclosure of the real property mortgaged under applicable laws.

SECTION 8. Section 32-19-06.2 of the North Dakota Century Code is created and enacted as follows:

32-19-06.2. Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the

mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though that party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may only be enforced by execution within three years from the date of entry of the judgment. If the judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

SECTION 9. AMENDMENT. Section 32-19-07 of the North Dakota Century Code is amended and reenacted as follows:

32-19-07. Other suits permitted. Neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made between July 1, 1937, and July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given between July 1, 1937, and July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract. Except as otherwise provided in sections 32-19-04 and 32-19-06, neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made after July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given after July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract except as provided by sections 32-19-04 and 32-19-06. However, notwithstanding Notwithstanding any other provisions provision of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after August 1, 1993, a mortgagee may bring an action on the promissory note ~~or other obligation of the mortgage~~ if the mortgagee waives the right to foreclose the mortgage given to secure the note ~~or other obligation~~. The provisions of this section allowing. Allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note ~~or other obligation apply~~ applies only to residential real property consisting of four or fewer residential units.

SECTION 10. AMENDMENT. Section 32-19-08 of the North Dakota Century Code is amended and reenacted as follows:

32-19-08. Sales made by whom and where - Notice. All sales A sale of mortgaged premises under a judgment of foreclosure must be made in the county

where the premises, or some part of ~~them~~, the premises are situated. The sale must be made by the sheriff of that county ~~or~~, the sheriff's deputy, or by some person appointed by the court for that purpose, upon the notice and in the manner prescribed by law for the sale of real property upon execution.

SECTION 11. AMENDMENT. Section 32-19-09 of the North Dakota Century Code is amended and reenacted as follows:

32-19-09. Certificate of sale - Deed and effect. ~~Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter. At the sheriff's sale, the officer or other person making the sale must give to the purchaser a certificate of sale as provided by section 28-23-11, and at the expiration of the time for the redemption of such property, if the same is not redeemed, the person or officer making the sale, or the successor in office, or other officer appointed by the court, must make to give the purchaser, the purchaser's heirs, or assigns, or to any person who has acquired the title of such the purchaser by redemption or otherwise, a deed or deeds of such the property. Such. The deed shall vest vests in the grantee all the right, title, and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by the mortgagor, and shall be is a bar to all claim, right, or equity of redemption in or to the property by the parties to such the action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.~~

SECTION 12. AMENDMENT. Section 32-19-10 of the North Dakota Century Code is amended and reenacted as follows:

32-19-10. Application of proceeds. The proceeds of every foreclosure sale must be applied to the discharge of the debt adjudged by the court to be due and of the costs, and if there is any surplus, it must be brought into court ~~for the use of the defendant or of the person entitled thereto,~~ subject to the order of the court. If the surplus is less than one thousand dollars and an application to receive the surplus is not filed with the court within sixty days after deposit, the court shall order the funds forfeited to the general fund of the county.

SECTION 13. AMENDMENT. Section 32-19-11 of the North Dakota Century Code is amended and reenacted as follows:

32-19-11. When surplus invested. ~~If the surplus upon a foreclosure sale, or any part thereof, shall remain in court for the term of three months without being applied for is one thousand dollars or more and is not applied for within ninety days, the judge of the district court may direct the same to be put out deposited at interest for benefit of the defendant, the defendant's representatives, or assigns, subject to the order of the court.~~

SECTION 14. AMENDMENT. Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

32-19-18. Redemption. ~~All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed at any time within one year after such sale as prescribed by chapter 28-24. A party in a foreclosure action or the successor of a party may redeem from the foreclosure sale within sixty days after the sale, except for agricultural land. Agricultural land may be redeemed within three hundred sixty-five days after the filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by~~

advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the sheriff's sale. The owner of the property has a paramount right to redeem upon paying the amount bid at the sheriff's sale plus interest on that amount at the same rate as the obligation secured by the mortgage. Persons holding subordinate liens on the property may redeem in the order of priority as determined by the order of attachment to the property. This redemption has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount, if any, determined to be due as of that date.

SECTION 15. AMENDMENT. Section 32-19-20 of the North Dakota Century Code is amended and reenacted as follows:

32-19-20. Notice before foreclosure. At least thirty days and not more than ninety days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate ~~described in the mortgage as shown by the records in the office of the recorder of the county in which such real estate is situated.~~

SECTION 16. AMENDMENT. Section 32-19-21 of the North Dakota Century Code is amended and reenacted as follows:

32-19-21. Contents of notice. The notice before foreclosure shall contain:

1. A description of the real estate.
2. The date and amount of the mortgage.
3. The amount due ~~for~~ to bring the installments of principal, and interest, and current as of a date specified, and the amount advanced by the mortgagee for taxes paid by the owner of the mortgage, stated, insurance, and maintenance, separately itemized.
4. A statement that if the amount due is not paid within thirty days from the date of the mailing or service of the notice proceedings will be commenced to foreclose the mortgage.

SECTION 17. AMENDMENT. Section 32-19-22 of the North Dakota Century Code is amended and reenacted as follows:

32-19-22. Notice may be served by registered ~~or certified~~ mail. The notice before foreclosure may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the owner's post-office address as such address is shown by in the mortgage or by the records in the chain of title to such real estate in the office of the recorder of the county where the real estate is situated. If such post-office address is not shown in the mortgage or in such records, the notice may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the post office nearest any part or tract of the real estate.

SECTION 18. AMENDMENT. Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

32-19-23. When notice not required. If the record title to real estate is in the name of a deceased person, ~~no~~ notice before foreclosure need not be served unless ~~an administrator or executor~~ a personal representative of the estate ~~of the deceased person has been~~ is appointed by the district court serving in the county in

which the real estate is situated. The certificate of the judge or clerk of the district court serving the county in which the real estate is situated stating that ~~no such administrator or executor~~ a personal representative has not been appointed ~~in that county may be recorded in the office of the recorder and~~ is sufficient evidence of that fact.

SECTION 19. AMENDMENT. Section 32-19-24 of the North Dakota Century Code is amended and reenacted as follows:

32-19-24. Service of notice on ~~administrator or executor~~ personal representative. If an ~~administrator or executor~~ a personal representative of the estate of the deceased owner has been appointed in the county where the real estate is situated, the notice before foreclosure must be served upon the ~~administrator or executor~~ personal representative. Service may be made by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the ~~administrator's or executor's~~ personal representative's post-office address as shown by the records of the district court by which the ~~administrator or executor~~ personal representative was appointed.

SECTION 20. AMENDMENT. Section 32-19-25 of the North Dakota Century Code is amended and reenacted as follows:

32-19-25. Notice may be served personally. Service of the notice before foreclosure may be made upon the title owner of record or upon the personal representative of the owner's administrator or executor estate by personal service ~~thereof either~~ within or without this state, ~~made~~ in the manner provided by law for the service of a summons in a civil action.

SECTION 21. AMENDMENT. Section 32-19-26 of the North Dakota Century Code is amended and reenacted as follows:

32-19-26. Actual receipt of notice always sufficient. In any case, service of the notice before foreclosure ~~shall be~~ is sufficient if it actually was received by the title owner of record or by the ~~administrator or executor~~ personal representative of the owner's estate. A United States post-office registry return receipt showing that the envelope containing the notice has been delivered to the ~~record title owner of record~~ or to the ~~administrator or executor~~ personal representative of the owner's estate, or to the agent of either, ~~shall be~~ is prima facie evidence that ~~such the~~ owner or ~~such the~~ owner's administrator or executor received the same.

SECTION 22. AMENDMENT. Section 32-19-28 of the North Dakota Century Code is amended and reenacted as follows:

32-19-28. Default may be cured. If the record title owner of record or the ~~administrator or executor~~ personal representative of the owner's estate, within thirty days from the service of notice before foreclosure, ~~shall perform~~ performs the conditions or ~~comply~~ complies with the provisions upon which default in the mortgage ~~shall have occurred, such the mortgage shall~~ must be reinstated and ~~shall~~ remain in full force and effect the same as though ~~no~~ a default had not occurred ~~therein in the mortgage.~~

SECTION 23. AMENDMENT. Section 32-19-29 of the North Dakota Century Code is amended and reenacted as follows:

32-19-29. Summons - How served. In addition to any other method provided by law for the service of The summons, in ~~all~~ actions for the a foreclosure

32-19-38. What the summons to contain. The summons mentioned in section 32-19-29 shall in a foreclosure action in which the persons unknown are

named as defendants must contain, or have appended ~~thereto~~ to the, a statement substantially as follows:

This action relates to the foreclosure of a mortgage or lien, as the case may be, upon (here describe the real estate involved in the action).

SECTION 26. AMENDMENT. Section 32-19-39 of the North Dakota Century Code is amended and reenacted as follows:

32-19-39. Judgment and decrees to be binding against whom. All orders, judgments, or decrees entered in any action ~~brought under the provisions of sections 32-19-29 through 32-19-38 shall be~~ are binding upon ~~all persons~~ each person proceeded against as ~~defendants~~ a defendant, whether of age or minors, and ~~all these~~ each person claiming by, through, or under ~~them~~ a defendant after the commencement of the action; ~~and all persons.~~ The same are binding upon whose interests did not appear of record in the office of the recorder, county auditor, or clerk of the district court of the county ~~wherein said~~ of the action is ~~brought~~ at the time of the commencement of the action.

SECTION 27. AMENDMENT. Section 32-19-40 of the North Dakota Century Code is amended and reenacted as follows:

32-19-40. Persons holding unrecorded conveyance need not be made parties, when. In any action to foreclose a mortgage or other lien upon real property, ~~no~~ a person holding a conveyance ~~from or under the mortgagor of the property mortgaged, or other owner thereof, nor one~~ having a lien upon ~~such the~~ property, if such conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not need to be made a party to ~~such the~~ action, and the judgment ~~therein~~ rendered and the proceedings ~~therein~~ shall be as in and of the action are conclusive ~~against the party holding such unrecorded conveyance or lien as if~~ such the party had been made a party to the action.

SECTION 28. AMENDMENT. Section 32-19-41 of the North Dakota Century Code is amended and reenacted as follows:

32-19-41. Abandoned personal property - Disposal by record title owner. ~~The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which grantee in a sheriff's deed that has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted. This section applies only to tracts of land not exceeding forty acres [16.19 hectares].~~

SECTION 29. AMENDMENT. Subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Mortgage" means a mortgage or mortgage lien ~~governed by the Short-term Mortgage Redemption Act as provided in chapter~~

~~32-19.4~~ covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less.

SECTION 30. REPEAL. Sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code are repealed.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 303

HOUSE BILL NO. 1312 (Representatives DeKrey, Nicholas) (Senators Klein, Tallackson)

AGRICULTURAL PROPERTY DEFICIENCY JUDGMENTS

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to deficiency judgments on agricultural land; and to amend and reenact section 32-19-06 of the North Dakota Century Code, relating to foreclosures of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁷ **SECTION 1. AMENDMENT.** Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court may shall render judgment for the amount found to be due at the time of the rendition of the judgment; and the costs of the action; and may shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due ~~and the costs of the action~~. The court may order and ~~compel~~ delivery of the possession of the premises to the purchaser at the sale, but in ~~no case may the possession of the premises sold be delivered until after the expiration of the one-year redemption period unless otherwise allowed~~ ordered by the court pursuant to section 32-19-19. ~~The court shall direct, and the judgment must provide,~~ that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. ~~The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment; if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the~~

¹⁵⁷ Section 32-19-06 was also amended by section 6 of Senate Bill No. 2232, chapter 302.

mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 2. A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the cost of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though the party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may be enforced only by execution within three years from the date of entry of the judgment. If the judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

LABOR AND EMPLOYMENT

CHAPTER 304

HOUSE BILL NO. 1347

(Representatives N. Johnson, Ekstrom, Hawken)
(Senators Grindberg, Heitkamp)

WAGE PAYMENT BY STORED VALUE CARD

AN ACT to amend and reenact section 34-14-02 of the North Dakota Century Code, relating to the payment of wages by stored value card.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-02 of the North Dakota Century Code is amended and reenacted as follows:

34-14-02. Agreed payday - Direct deposit - Stored value card. Every employer shall pay all wages due to employees at least once each calendar month on regular agreed paydays designated in advance by the employer. Wages must be paid in lawful money of the United States; with checks, as that item is used in chapter 41-03, drawn on banks or credit unions convenient to the place of employment; or, with direct deposit in the financial institution of the employee's choice; or, at the election of the employee when offered by the employer, by delivery to the employee of a stored value card that meets the requirements of this section. A stored value card that is used by an employer to pay wages must be issued by a federally insured bank or credit union. The value of the funds underlying a stored value card that is used by an employer to pay wages must be a deposit that is insured by the federal deposit insurance corporation or national credit union administration. Before paying wages by delivering a stored value card to an employee, an employer must have deposited with the issuer funds in an amount at least equal to the wages due from the employer to each employee whose wages are being paid through a stored value card and any account fees that are charged to the employer by the issuer.

Approved April 14, 2005

Filed April 18, 2005

LIENS

CHAPTER 305

SENATE BILL NO. 2061

(Senators J. Lee, Brown)
(Representative Bernstein)

LANDLORD'S MOBILE HOME LIEN

AN ACT to amend and reenact section 35-20-17 of the North Dakota Century Code, relating to a landlord's mobile home lien; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-20-17 of the North Dakota Century Code is amended and reenacted as follows:

35-20-17. Landlord's mobile home lien - Penalty.

1. A landlord of a mobile home lot has a lien for accrued rents, storage, and removal relating to 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.
2. For the lien or subsequent title obtained by the lienholder to be valid against a good-faith purchaser, the landlord shall post a signed and dated notice of the lien on the primary entrance to the mobile home. An individual who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor. The notice of lien must contain the name and last-known address of the owner of the mobile home, the name and post-office address of the lien claimant, the amount of the lien, a description of the location and type of mobile home, and a recitation of the penalty provisions of this section.
3. 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 accrued rents, storage, and removal relating to 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 March 16, 2005

Filed March 17, 2005

LIVESTOCK

CHAPTER 306

HOUSE BILL NO. 1326

(Representatives Sitte, Aarsvold, L. Meier)
(Senators Dever, Kilzer, Kringstad)

VENEMOUS REPTILE POSSESSION

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to the possession of live venomous reptiles; 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:

Venomous reptiles - Possession - Permit - Penalty.

1. Except in accordance with the terms of a permit issued under subsection 2, a person may not possess a live venomous reptile, as defined by the state veterinarian.
2. The state veterinarian may issue a permit for the possession of a live venomous reptile only if, in the determination of the state veterinarian, the applicant seeking the permit demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and if necessary dispose of the reptile. For purposes of this subsection, an educational purpose includes research, and displays at schools, institutions of higher education, wildlife preserves, and zoos. The state veterinarian may establish the length of time for which each permit is valid.
3. A person may not release in this state any reptile whose possession is prohibited by this section.
4. A person who violates this section is guilty of a class B misdemeanor.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 307

HOUSE BILL NO. 1392

(Representatives Nicholas, Kempenich, S. Meyer)
(Senators Erbele, Flakoll)

BRAND REINSPECTION AND RECORDING

AN ACT to create and enact a new section to chapter 36-09 of the North Dakota Century Code, relating to the costs of brand reinspection; to amend and reenact sections 36-09-09 and 36-09-24 of the North Dakota Century Code, relating to brand recording and fieldmen; to repeal section 36-09-09 of the North Dakota Century Code, relating to the cancellation and rerecording of brands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-09 of the North Dakota Century Code is amended and reenacted as follows:

36-09-09. (~~Effective through June 30, 2006~~) Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 1966, each livestock brand or mark must be canceled and no person may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person should desire to continue ownership of a brand or mark, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands.

(~~Effective after June 30, 2006~~) Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 1966, each and every livestock brand or mark must be canceled and no person, copartnership, company, firm, or corporation may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person, copartnership, company, firm, or corporation should desire to continue ownership thereof, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands thereafter.

SECTION 2. AMENDMENT. Section 36-09-24 of the North Dakota Century Code is amended and reenacted as follows:

36-09-24. Police powers of chief brand inspector and ~~two~~ fieldmen. The chief brand inspector and ~~two fieldmen~~ all fieldmen employed by the North Dakota stockmen's association have the power:

1. Of a police officer for the purpose of enforcing brand laws and any other state laws or rules relating to livestock.
2. To make arrests upon view and without warrant for any violation of this chapter or any other state laws or rules relating to livestock committed in the inspector's presence.

3. To respond to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, a request from a law enforcement agency or officer means only a request for assistance to a particular and single violation or suspicion of violation of law, and does not constitute a continuous request for assistance.

SECTION 3. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Reinspection request - Responsibility for costs. A person that contends a brand inspection error occurred and that, as a result of the error, cattle were shipped erroneously, may request a reinspection. If during the reinspection it is determined that a brand inspection error was made, the North Dakota stockmen's association shall bear the costs of the reinspection. If it is determined that a brand inspection error was not made, the person that requested the reinspection shall reimburse the stockmen's association for the costs of the reinspection.

SECTION 4. REPEAL. Section 36-09-09 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective on July 1, 2006.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 308

HOUSE BILL NO. 1448

(Representatives Kempenich, Froelich, Nicholas)
(Senators Bowman, Flakoll, Taylor)

ANIMAL IDENTIFICATION PROGRAM RECORDS

AN ACT to create and enact a new section to chapter 36-09 of the North Dakota Century Code, relating to animal identification program records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Premises and animal identification program - Open records - Exception.

1. Except as provided in subsection 2, the following information is confidential and not subject to the open records requirements of section 44-04-18:
 - a. Any information created, collected, or maintained by the state veterinarian or the North Dakota stockmen's association regarding premises or animal identification;
 - b. The name and address of the owner of the premises or of any animals identified under this section; and
 - c. The name and address of the lessee of any premises or of any animals identified under this section.
2. The state veterinarian may not release any information designated as confidential under subsection 1 except:
 - a. Upon the written consent of every person identified or identifiable by the information;
 - b. In accordance with federal law for the purpose of a national animal identification program;
 - c. To any state or federal agency for the purposes of animal disease control and animal disease traceback;
 - d. To the attorney general and any other law enforcement agency pursuing a criminal investigation; or
 - e. Pursuant to an order issued by a court upon a showing of good cause.
3. This section does not preclude the exchange of information between the state veterinarian and the North Dakota stockmen's association.

4. A violation of this section is subject to section 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any person that has contracted with the state for the provision of services related to the premises or animal identification program.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 309

HOUSE BILL NO. 1180

(Representatives Metcalf, DeKrey, Headland, Mueller)
(Senators Flakoll, Robinson)

LIVESTOCK RAFFLES

AN ACT to amend and reenact section 36-21.1-09 of the North Dakota Century Code, relating to the raffling of livestock.

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, bison, sheep, horses, and pigs, provided each raffle ticket contains a statement that the person who wins the animal may convert that prize to a cash prize. The animal to be raffled may be donated to or purchased by the organization. The donor or seller of the animal shall determine the market value of the animal. If the person who wins the animal desires a cash prize instead of the animal, the organization shall pay the player a cash prize that must equal the lesser of the market value of the animal or the maximum single cash prize amount allowed under section 53-06.1-10.1.
3. A person may not give away any live animal, other than those authorized under 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.
4. The provisions of subsection 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.

Approved March 7, 2005

Filed March 8, 2005

MILITARY

CHAPTER 310

SENATE BILL NO. 2129

(Government and Veterans Affairs Committee)
(At the request of the Department of Veterans' Affairs)

VETERANS' AID FUND LOAN FEES

AN ACT to amend and reenact section 37-14-07 of the North Dakota Century Code, relating to collecting fees on loans from the veterans' aid fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-07 of the North Dakota Century Code is amended and reenacted as follows:

37-14-07. Repayment to be made to aid fund. Upon the granting of an application and at the time of disbursement, the applicant, or the applicant's legally appointed guardian, shall execute an agreement with the department of veterans' affairs that within a specified period of not to exceed four years from the date of the receipt of the last item of the advancement, the applicant will repay to the state for the use of the veterans' aid fund the full amount of all advancements made to the applicant with interest as provided in rules adopted under section 37-14-10, but not to exceed ten percent annually. One-half of the interest must be waived if timely repayment is made to the fund. The department may take necessary legal action to collect, compromise, or settle loans if in the opinion of the department the person has the financial means to repay, and the person deliberately refuses to do so. The department may release from financial liability any person it determines is financially unable to repay the loan through no fault of the person. The department may assess and collect a late payment penalty as provided in section 47-14-05.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 311

HOUSE BILL NO. 1128

(Government and Veterans Affairs Committee)
(At the request of the Department of Veterans' Affairs)

COUNTY VETERANS' SERVICE OFFICER APPOINTMENT

AN ACT to amend and reenact section 37-14-18 of the North Dakota Century Code, relating to appointment of a county veterans' service officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁸ **SECTION 1. AMENDMENT.** Section 37-14-18 of the North Dakota Century Code is amended and reenacted as follows:

37-14-18. County veterans' service officer - Appointment - Duties. The board of county commissioners of each county of the state of North Dakota ~~may~~ shall appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. ~~Such~~ An individual may serve as a county veterans' service officer in more than one county. The appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. It is the duty of ~~such~~ the county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist such returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer, under the supervision of the state commissioner of veterans' affairs, to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits.

Approved March 7, 2005
Filed March 8, 2005

¹⁵⁸ Section 37-14-18 was also amended by section 1 of Senate Bill No. 2218, chapter 316.

CHAPTER 312

HOUSE BILL NO. 1355

(Representatives Metcalf, Amerman, Froseth, Mueller)
(Senators Andrist, Robinson)

VETERANS' HOME ADMINISTRATOR TITLE

AN ACT to amend and reenact sections 37-15-07, 37-15-08, 37-15-14.1, 37-15-16, 37-15-17, 37-15-18, 37-15-19, 37-15-21, and 37-18.1-04 of the North Dakota Century Code, relating to the title of the administrator of the veterans' home.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-07 of the North Dakota Century Code is amended and reenacted as follows:

37-15-07. Administrator of veterans' home - Appointment - Qualifications. The appointment, qualifications, term of office, and salary of the administrator of the veterans' home must be as prescribed in section 37-18.1-03. The administrative committee on veterans' affairs may designate the administrator as commandant of the veterans' home if the administrator is an honorably discharged veteran.

SECTION 2. AMENDMENT. Section 37-15-08 of the North Dakota Century Code is amended and reenacted as follows:

37-15-08. Subordinate officers - Appointment - Preference to veterans - Compensation - Removal. The ~~commandant~~ administrator of the veterans' home shall appoint all necessary subordinate officers of the home. In the appointment of ~~such~~ the officers, the preference afforded by chapter 37-19.1 must be given to those persons who qualify ~~therefor~~ for the preference. The ~~commandant~~ administrator shall fix the compensation of all subordinate officers, subject to legislative appropriation, and any ~~such~~ officer may be removed by the ~~commandant~~ administrator for inefficiency or misconduct.

SECTION 3. AMENDMENT. Section 37-15-14.1 of the North Dakota Century Code is amended and reenacted as follows:

37-15-14.1. Membership contribution for residents of veterans' home - Special fund.

1. The administrative committee on veterans' affairs may establish a membership contribution to be paid by members of the veterans' home. The fee must be based on the adjusted income of each member, but may not exceed forty-nine percent of the average daily per member cost. The membership contribution must be set under a formula determined by the administrative committee and designed to assure dignity and equity in the charge. The administrative committee may reconsider its action establishing a membership contribution, amend or rescind the contribution charge, or reinstate a contribution charge previously rescinded. The ~~commandant~~ administrator of the veterans' home shall collect monthly any membership contribution levied.

2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:
 - a. Moneys earned during authorized leaves or furloughs from the veterans' home.
 - b. Moneys expended by the member for hospitalization due to illness or injury.
 - c. Moneys expended by the member for other medical care or treatment, or for required medicines.
 - d. Such other receipts or expenditures as the administrative committee may permit to be deducted in individual cases.
3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in the veterans' home operating fund.

SECTION 4. AMENDMENT. Section 37-15-16 of the North Dakota Century Code is amended and reenacted as follows:

37-15-16. ~~Commandant~~ Administrator shall take charge of unclaimed estates of small value. If a member of the veterans' home dies leaving property of the value of three thousand dollars or less, the ~~commandant~~ administrator immediately shall take charge of ~~such the~~ property. If within forty-five days of the date of death ~~no~~ a valid claim of any heir or devisee is not made for the property and ~~no an~~ application or petition has not been filed for issuance of letters of administration, the ~~commandant~~ administrator shall convert the property into cash without probate or other proceedings and make payment ~~in the following order:~~

1. ~~Reasonable~~ first toward reasonable funeral expenses;
2. ~~Reasonable~~ and second toward reasonable and necessary medical and hospital expenses of the last illness of the decedent. If any cash remains, the ~~commandant~~ administrator shall deposit the cash with the state treasurer who shall credit it to the veterans' home operating fund. The ~~commandant~~ administrator shall make a report of the ~~commandant's~~ administrator's action to the administrative committee on veterans' affairs. The report must be audited by, and included in the records of, the committee.

SECTION 5. AMENDMENT. Section 37-15-17 of the North Dakota Century Code is amended and reenacted as follows:

37-15-17. Intestate members leaving estates valued in excess of three thousand dollars - ~~Commandant~~ Administrator to administer estate. If a member of the veterans' home dies leaving property in excess of three thousand dollars in value not disposed of by will, the ~~commandant~~ administrator is entitled to letters of administration ~~upon such~~ for the estate. The ~~commandant~~ administrator shall apply to the proper court for letters of administration, qualify as administrator, and distribute and dispose of ~~such the~~ estate ~~as is provided by this code~~. If ~~no~~ a valid claim is not made to ~~such the~~ estate by the heirs or the next of kin of the deceased member for a period of one year after the granting of letters of

administration, the residue of the estate must be deposited with the state treasurer for the benefit of the veterans' home operating fund.

SECTION 6. AMENDMENT. Section 37-15-18 of the North Dakota Century Code is amended and reenacted as follows:

37-15-18. ~~Commandant as administrator~~ Administrator of estate - Bond not required - Fees - Allowance of fees by district court. Upon becoming administrator of any estate ~~as provided in~~ under section 37-15-17, the ~~commandant~~ administrator of the veterans' home is not required to give bond and ~~is not entitled to~~ may not charge or receive any compensation for the ~~commandant's~~ administrator's services as administrator of the estate. The district court serving the county where the administration proceedings are ~~had~~ shall conducted may not ~~make~~ nor allow any charge or fee in connection with the administration proceedings other than the actual disbursements of the administrator.

SECTION 7. AMENDMENT. Section 37-15-19 of the North Dakota Century Code is amended and reenacted as follows:

37-15-19. Biennial report. The ~~commandant~~ administrator of the veterans' home may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

SECTION 8. AMENDMENT. Section 37-15-21 of the North Dakota Century Code is amended and reenacted as follows:

37-15-21. ~~Commandant~~ Administrator may accept gifts, donations, or bequests. The ~~commandant~~ administrator for and in behalf of the veterans' home ~~is hereby authorized to~~ may accept and expend funds from any source, including federal or private sources and donations, gifts, or bequests offered or tendered to, or for the benefit of, the veterans' home to be used to benefit the veterans' home. All ~~such~~ moneys received or accepted must be used for the specific purposes for which they were given or donated. This authority ~~shall apply~~ applies and ~~be~~ is retroactive to any or all gifts, donations, or bequests ~~heretofore~~ already tendered, offered, or made. The veterans' home may establish and maintain its own local fund to administer moneys received under this section. All interest, rent, or income from moneys or property received under this section must be deposited in the veterans' home operating fund unless by the terms of acquisition the moneys are required to be maintained in a different manner.

SECTION 9. AMENDMENT. Section 37-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-18.1-04. Committee members not to receive compensation - Expenses permitted. Committee members may not receive any compensation for the performance of their official duties. Voting members may be reimbursed for travel expenses and meals and lodging expenses in connection with their official duties at the same rate and in the same manner as are elected officials and employees of the state, with payment to be made by the department of veterans' affairs and the veterans' home to each of their respective subcommittee members incurring ~~such~~ the expenses. ~~Such~~ The payment must be made by warrant-check

drawn by the office of management and budget upon the submission of a proper voucher to it, signed by the commissioner of veterans' affairs or the ~~commandant~~ administrator of the veterans' home, as the case may be.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 313

SENATE BILL NO. 2128

(Government and Veterans Affairs Committee)
(At the request of the Veterans' Home)

VETERANS' HOME ADMISSION REQUIREMENTS

AN ACT to amend and reenact section 37-15-10 of the North Dakota Century Code, relating to admission requirements for veterans at the veterans' home.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-10 of the North Dakota Century Code is amended and reenacted as follows:

37-15-10. Admittance to veterans' home - Requirements governing.

1. ~~No An~~ applicant may not be admitted to the veterans' home unless the applicant ~~has been~~ is a bona fide resident of this state ~~for at least one year next~~ preceding the applicant's application for admission ~~thereto~~. The ~~one-year~~ residency ~~immediately preceding application~~ requirement may be waived if the applicant served in a North Dakota regiment or was accredited to this state.
2. The spouse or surviving spouse of those mentioned in subsection 1 of section 37-15-02 may be admitted upon the same footing as the veteran; ~~provided, however, that such spouse or surviving spouse has entered into the contract of marriage to the veteran at least five years prior to date of application and has attained the age of forty-five years at date of application.~~
3. ~~No person~~ An individual may not be admitted to the home until that ~~person~~ individual has made formal application and furnished such proof as may be required by the administrative committee on veterans' affairs and the application has been approved by the board of admissions of the institution that the committee has designated.
4. When a member of the home who is not eligible for veterans' administration hospitalization and care becomes unable from any cause to care for oneself under ~~the rules prescribed~~ adopted by the administrative committee on veterans' affairs for the admission and care of members in the home, the member ~~shall become~~ becomes a charge of the county of residence at the time of admission. ~~No An~~ individual may not gain or lose legal residence by reason of residence in or being a member of the veterans' home.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 314

HOUSE BILL NO. 1186

(Representatives Mueller, DeKrey)
(Senator Mathern)

BURNING BAN VIOLATIONS

AN ACT to amend and reenact section 37-17.1-10 of the North Dakota Century Code, relating to violation of a local burning ban; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-10 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-10. Local disasters or emergencies - Penalty.

1. Unless so declared in accordance with the provisions of subsection 4 of section 37-17.1-05, a local disaster or emergency may be declared only by the principal executive officer of the county or city. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the county or city. Any order or proclamation declaring a local disaster or emergency must be given prompt and general publicity and must be filed promptly with the county or city auditor.
2. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder.
3. An order or proclamation issued under this section which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of an infraction.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 315

SENATE BILL NO. 2151

(Senator Bowman)
(Representative Porter)

EMERGENCY RESPONSE UNIT INTRASTATE AID

AN ACT to create and enact two new sections to chapter 37-17.1 of the North Dakota Century Code, relating to intrastate mutual aid by emergency response units; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this Act, unless the context otherwise requires:

1. "Assisting unit" means an emergency response unit that renders mutual aid assistance to a requesting unit.
2. "Emergency response unit" includes a fire department, law enforcement agency, emergency medical services operation, and any other public, tribal, and private group that responds to a request for assistance at the scene of an incident.
3. "Incident" means any situation that requires actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Incident command system" means a recognized system adopted by the United States department of homeland security and the division of emergency management for the command, control, and coordination of resources and personnel at the scene of an incident.
5. "Requesting unit" means the emergency response unit with responsibility for responding to an incident which seeks mutual aid assistance from another emergency response unit.

SECTION 2. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Intrastate mutual aid. A system of intrastate mutual aid between emergency response units in North Dakota is created by this Act in order to provide a framework for coordinated response and to ensure, to the fullest extent possible, eligibility for emergency grant funds or other reimbursement assistance. Unless other terms have been specifically agreed upon, an emergency response unit may render mutual aid to another emergency response unit in the state under the following terms and conditions:

1. An incident command system must be designated by the requesting unit, and the incident command system must be used. The incident

commander may request mutual aid and is responsible for all resources assigned to or responding to an incident.

2. The individual in charge of an emergency response unit may determine whether personnel or equipment is sent beyond the area of responsibility of the unit to respond to a call by a requesting unit. An emergency response unit declining to provide assistance outside its area of responsibility is not liable for damage to a requesting unit.
3. All resources assigned to an incident are under the command of the incident commander. The individual in charge of an assisting unit may retain the ability to withdraw personnel or resources upon notification to the incident commander. An assisting unit withdrawing from an emergency response operation is not liable for damage to the requesting unit.
4. With the exception of volunteers, each assisting unit shall continue to provide the same salaries and benefits to its personnel assigned to render assistance to a requesting unit as the personnel would receive if on duty within their area of responsibility. If emergency grant funds or other assistance becomes available to the requesting unit, the requesting unit shall reimburse any assisting units, whether paid or volunteer within their own area of responsibility, on an equitable basis at rates consistent with the policies of the agencies or entities providing emergency grant funds or other reimbursement assistance, for costs incurred by the assisting units for salaries and benefits. The cost of repair and maintenance of equipment used or expended while rendering assistance must be borne by the emergency response unit owning the equipment unless emergency grant funds or other assistance becomes available to cover the costs. An emergency response unit taking independent action outside a mutual aid request by the requesting unit is not eligible for reimbursement or compensation of costs.
5. Personnel of an assisting unit who sustain injury or death in the course of their employment are entitled to all applicable benefits normally available to personnel while performing duties for their unit.

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

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 316

SENATE BILL NO. 2218

(Senators Syverson, Dever, G. Lee)
(Representatives Belter, Bernstein, S. Kelsh)

VETERANS' FUNDING AND RECORDS

AN ACT to create and enact two new sections to chapter 37-18 of the North Dakota Century Code, relating to funding and veterans' records; to amend and reenact sections 37-14-18 and 37-18-04 of the North Dakota Century Code, relating to supervision of county veterans' service officers and duties of the commissioner of veterans' affairs; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁹ **SECTION 1. AMENDMENT.** Section 37-14-18 of the North Dakota Century Code is amended and reenacted as follows:

37-14-18. County veterans' service officer - Appointment - Duties. The board of county commissioners of each county of the state of North Dakota may appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. Such appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. It is the duty of such county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist such returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer, ~~under the supervision of the state commissioner of veterans' affairs,~~ to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits.

SECTION 2. A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

Funding authority - Continuing appropriation. The department of veterans' affairs may accept and expend funds from any source, including federal or private sources, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission. However, all interest earnings from the veterans' postwar trust fund received by the department of veterans' affairs from the administrative committee on veterans' affairs are appropriated to the department on a continuing basis.

¹⁵⁹ Section 37-14-18 was also amended by section 1 of House Bill No. 1128, chapter 311.

SECTION 3. A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

Records. The department of veterans' affairs may receive from the United States such records of veterans as the United States may wish to turn over to the department of veterans' affairs and same shall keep and maintain the records as provided in this chapter.

SECTION 4. AMENDMENT. Section 37-18-04 of the North Dakota Century Code is amended and reenacted as follows:

37-18-04. Duties of commissioner. It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of and implement programs and benefits authorized by statute; to assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; to advise and assist veterans in taking advantage of the provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures afforded by the federal government; to ~~assist, supervise, advise, and direct the work of county service officers~~ provide counties with recommended qualifications and standards for county veterans' service officers; to assist counties with training of county veterans' service officers; to provide county veterans' service officers with educational materials; to assist county veterans' service officers in the formation of county service to veterans' committees and to outline, assist, and direct the activities of such committees performance of their duties; to disseminate information; and to do any and all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

~~The department of veterans' affairs may accept and expend funds from any source, including federal or private sources and interest earnings from the veterans' postwar trust fund, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law, incurred pursuant to hearings covered in section 37-19.1-04 or incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission.~~

~~The department of veterans' affairs may receive from the United States government such records of veterans as the United States government may wish to turn over to the department of veterans' affairs and same shall keep and maintain such records as hereafter provided by this chapter.~~

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 317

SENATE BILL NO. 2146

(Senators Lyson, Syverson, Tallackson)
(Representatives Martinson, Maragos, Aarsvold)
(At the request of the Adjutant General)

VETERANS' ADJUSTED COMPENSATION

AN ACT to provide adjusted compensation for eligible resident veterans and for the filing and payment of claims, duties of the adjutant general, and exemption from taxation and execution for such payments; to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to individual income tax deductions; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of public purpose. In order to ease the financial hardships and personal and family sacrifice sustained by those North Dakota members of the national guard, reserve, and active duty component who were mobilized after December 5, 1992, in support of military operations around the world it is the intent of the legislative assembly that additional compensation be provided to those resident veterans of North Dakota and payment of that compensation is declared to be a public purpose. It is the further intent of the legislative assembly to encourage those North Dakota resident veterans to continue their voluntary membership in the national guard, reserve component, and active military force.

SECTION 2. Definitions. As used in sections 1 through 9 of this Act:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
 - a. The surviving unremarried husband or wife as of the date of signing the application;
 - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
 - c. The surviving person standing in loco parentis; or
 - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran after December 5, 1992, for which the veteran received an armed forces expeditionary medal or campaign badge.
5. "Honorable and faithful" means service evidenced by:

- a. An honorable discharge, or its equivalent;
 - b. In the case of an officer, a certificate of service; and
 - c. In the case of a veteran who has not been discharged, a certificate from the appropriate service authority that the veteran's service was honorable and faithful.
6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, 2007.
7. "Resident" means a person who has filed a North Dakota income tax return for the year prior to making application for benefits under this section and who:
 - a. Was born in and lived in the state of North Dakota until entrance into the armed forces of the United States;
 - b. Was born in, but was temporarily living outside the state of North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States; or
 - c. Was born elsewhere but had resided within the state of North Dakota for the last six months before entrance into military service and had prior to or during that six-month period:
 - (1) Voted in the state of North Dakota;
 - (2) Was an emancipated minor during such 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.
 - d. "Resident" also means a veteran who was a bona fide resident of the state 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.
8. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C 12302 and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

SECTION 3. Payment of adjusted compensation for domestic and foreign service. Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service, not to exceed nine hundred dollars. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof, not to exceed one thousand eight hundred dollars.

Combined totals for stateside and foreign service may not exceed one thousand eight hundred dollars. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under sections 1 through 9 of this Act to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, 2007, or in the case of a soldier mobilized on June 30, 2007, not later than six months after the end of the mobilization period of service.

SECTION 4. Payment to beneficiary of veteran who died in active service. In the case of a veteran who died as a result of active service during the period of service, the beneficiary of such veteran is entitled to a payment of two thousand five hundred dollars in lieu of any other compensation under sections 1 through 9 of this Act.

SECTION 5. Application. Each veteran or veteran's beneficiary entitled to payment under sections 1 through 9 of this Act shall make application to the adjutant general of the state of North Dakota upon a form prescribed by the adjutant general. If the veteran is incompetent or the veteran's beneficiary is incompetent or a minor, application may be made by the guardian of the veteran or beneficiary, and if there is no guardian, the person determined by the adjutant general to have assumed the major responsibility for the care of the veteran or beneficiary and to be a proper person to receive payment for the veteran or beneficiary may make the application. If a veteran is hospitalized in a state, county, or federal institution and no application has otherwise been approved by the adjutant general, the person in charge of such institution may make the application with the approval of the adjutant general. For purposes of this section, the word "minor" does not include the unremarried spouse of a veteran. Each application must be accompanied by a certified copy of honorable discharge or other evidence of honorable and faithful service. Each application must be subscribed and sworn to by the applicant in such manner as may be prescribed by the adjutant general. The adjutant general shall provide by rule for an endorsement of the evidence of honorable and faithful service if application for payment has been made.

SECTION 6. Method of payment - Deduction of sums due veterans' aid fund. Upon submission of satisfactory proof that the applicant is entitled to payment under sections 1 through 9 of this Act, the adjutant general shall compute the amount of payment due the applicant, make a record thereof, and forward a voucher for the payment to the office of management and budget, which shall cause the warrant-check to be issued for the amount of the claim. Payment must be made from funds appropriated by the legislative assembly. If the veteran or the applicant for payment under sections 1 through 9 of this Act is indebted to the veterans' aid fund of the state of North Dakota, the adjutant general shall determine the amount of such indebtedness and certify such determination to the office of management and budget together with the record of payment due. Within the limits of the payment due, the amount of such indebtedness must be paid to the veterans' aid fund and the applicant must be paid any remainder to which the veteran is entitled.

SECTION 7. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted. Payments under sections 1 through 9 of this Act are exempt from all state and local taxes, including taxes determined under section 57-38-29 or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under sections 1 through 9 of this Act is void and payment to the veteran may not be denied

because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

SECTION 8. Duty of adjutant general - Finality of decisions - Questions of residence subject to court review. The adjutant general shall administer sections 1 through 9 of this Act. The adjutant general shall prepare and distribute application blanks and investigate all claims and applications filed. If the adjutant general is satisfied of the proof of a claim and application, the adjutant general shall approve and direct payment of the claim. The adjutant general may adopt any rules necessary to the efficient administration of sections 1 through 9 of this Act. The necessary books, papers, records, cases, and equipment used in the administration of sections 1 through 9 of this Act become a part of the permanent records of the office of the adjutant general. The adjutant general may determine any claim in any case if doubt arises as to the eligibility of an applicant to receive payment and the decision of the adjutant general in such case is final, except on questions of residence which are subject to review by a court of competent jurisdiction. The adjutant general shall authorize payment for prisoners of war upon their release and return.

SECTION 9. Penalty for false statement. Any person who willfully makes a false statement in the application for benefits under section 5 of this Act is guilty of a class A misdemeanor.

¹⁶⁰ **SECTION 10.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 3 or 4 of this Act.

SECTION 11. EFFECTIVE DATE. Section 10 of this Act is effective for taxable years beginning after December 31, 2004.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2005
Filed April 20, 2005

¹⁶⁰ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

MINING AND GAS AND OIL PRODUCTION

CHAPTER 318

HOUSE BILL NO. 1090

(Judiciary Committee)

(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION OIL AND GAS APPEALS

AN ACT to amend and reenact sections 38-08-13 and 38-08-14 of the North Dakota Century Code, relating to the right to ask for reconsideration of and to appeal from industrial commission decisions dealing with oil and gas resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-13 of the North Dakota Century Code is amended and reenacted as follows:

38-08-13. ~~Person~~ Party adversely affected may apply for reconsideration. Any ~~person~~ party adversely affected by any order of the commission may file ~~in writing~~ a written petition for reconsideration in accordance with the procedures of section 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section 28-32-40 ~~or~~ and rules adopted pursuant to it.

SECTION 2. AMENDMENT. Section 38-08-14 of the North Dakota Century Code is amended and reenacted as follows:

38-08-14. ~~Person~~ Party adversely affected may appeal to district court.

1. Any ~~person~~ party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the

order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 319

SENATE BILL NO. 2040

(Legislative Council)
(Natural Resources Committee)

COAL MINING BOND RELEASE NOTICE

AN ACT to amend and reenact subdivisions a and b of subsection 1 of section 38-14.1-17 of the North Dakota Century Code, relating to notice of release of surface coal mining performance bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions a and b of subsection 1 of section 38-14.1-17 of the North Dakota Century Code are amended and reenacted as follows:

- a. Within thirty days after filing of the request, a copy of an advertisement placed at least once a week for four successive weeks in the official newspaper of each county ~~wherein in which the surface coal mining operation is located and in other daily newspapers of general circulation in the locality of the surface coal mining operation.~~ Such. The advertisement must contain notification of all of the following:
 - (1) The precise location and the number of acres [hectares] of the land affected.
 - (2) The permit and the date approved.
 - (3) The amount of the bond filed and the portion sought to be released.
 - (4) The type and approximate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan.
 - (5) The right to file written objections and to request a public hearing or an informal conference as specified in subsection 2.
- b. Copies of letters which the permittee has sent to all owners of surface rights within the permit area proposed for bond release, ~~all owners of subsurface rights within the permit area proposed for bond release,~~ adjoining property owners, state agencies specified in subsection 2 of section 38-14.1-21, heads of local governmental bodies, including the county commissioners and mayors of municipalities, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operations took place, notifying them of the permittee's intention to seek release from the bond. Such The letters must also contain notice of the right to file

written objections and request an informal conference or a public hearing as specified in subsection 2.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 320

HOUSE BILL NO. 1344

(Representatives S. Meyer, Drovdal, Kempenich, Rennerfeldt)
(Senators Bowman, Wardner)

TERMINATION OF MINERAL INTERESTS

AN ACT to amend and reenact section 38-18.1-03 of the North Dakota Century Code, relating to termination of mineral interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-03. When mineral interest deemed to be used.

1. A mineral interest is deemed to be used when:
 - a. There are any minerals produced under that interest.
 - b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.
 - c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
 - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
 - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
 - f. Taxes are paid on the mineral interest by the owner or the owner's agent.
 - g. A proper statement of claim is recorded as provided by section 38-18.1-04.
 - h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.

2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 321

HOUSE BILL NO. 1166

(Natural Resources Committee)

(At the request of the Public Service Commission)

INTERSTATE MINING COMPACT

AN ACT to create and enact a new chapter to title 38 of the North Dakota Century Code, relating to the interstate mining compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 38 of the North Dakota Century Code is created and enacted as follows:

Interstate mining compact. The interstate mining compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I - Findings and Purposes

1. The party states find that:
 - a. Mining and the contributions thereof to the economy and well-being of every state are of basic significance.
 - b. The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.
 - c. Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concerns.
 - d. Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.
 - e. The states are in a position and have the responsibility to assure that mining is conducted in accordance with sound conservation principles and with due regard for local conditions.
2. The purposes of this compact are to:

- a. Advance the protection and restoration of land, water, and other resources affected by mining.
- b. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.
- c. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.
- d. Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.
- e. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II - Definitions

As used in this compact, the term:

1. "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use, but does not include those aspects of deep mining not having significant effect on the surface and does not include excavation of grading when conducted solely in aid of onsite farming or construction.
2. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

Article III - State Programs

Each party state agrees that it has or will establish effective programs to accomplish the purposes of this compact.

Article IV - Powers

In addition to any other powers conferred upon the interstate mining commission, established by article V of this compact, such commission shall have power to:

1. Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes

and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

2. Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.
3. Make recommendations concerning any aspects of law or practice and governmental administration dealing with matters within the purview of this compact.
4. Gather and disseminate information relating to any of the matters within the purview of this compact.
5. Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.
6. Consult, upon the request of a party state and within available resources, with the officials of such state in respect to any problem within the purview of this compact.
7. Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.
8. Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V - The Commission

1. There is hereby created an agency of the party states to be known as the "interstate mining commission", hereinafter called "the commission". The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of the party state, each governor may have the assistance of an advisory body, including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate, in considering problems relating to mining and in discharging the responsibilities as a commissioner on the commission. If a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, an alternate must be designated to represent and act on behalf of the governor. The alternate designated by the governor must be employed by the state agency with responsibilities for protecting and restoring lands affected by mining. The designation of an alternate must be communicated by the governor to the commission in such manner as its bylaws may provide.
2. The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to subsections 3, 7, and 8 of article IV or requesting, accepting, or disposing of funds, services, or other property pursuant to

this subsection, subsections 7 and 8 of this article, or article VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action must be by a majority of those present and voting provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, who are present. The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

3. The commission shall have a seal.
4. The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director and fix the duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amounts of such bonds must be determined by the commission.
5. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions and shall fix the duties and compensation of such personnel.
6. The commission may establish and maintain independently, or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old-age and survivor insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.
7. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.
8. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this subsection or services borrowed pursuant to subsection 7 must be reported in the annual report of the commission. Such report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.
9. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a

copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

10. The commission annually shall make to the governor, legislative assembly, and any advisory body established under subsection 1 of each party state a report covering the activities of the commission for the preceding year and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

Article VI - Advisory, Technical, and Regional Committees

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which must include private persons and public officials, and shall cooperate with the use and services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

Article VII - Finance

1. The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.
2. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget must be apportioned among the party states one half in equal shares and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations must indicate the sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.
3. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection 8 of article V, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except when the commission makes use of funds available to it under subsection 8 of article V hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission must be audited yearly by a qualified public accountant

and the report of the audit must be included in and become part of the annual report of the commission.

5. The accounts of the commission must be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
6. Nothing contained herein must be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII - Entry Into Force and Withdrawal

1. The compact enters into force when enacted into law by any four or more states. Thereafter, this compact becomes effective as to any other state upon its enactment thereof.
2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal takes effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal affects any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX - Effect on Other Laws

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

Article X - Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Filing bylaws and amendments. In accordance with subsection 9 of article V of the compact, the interstate mining compact commission shall file copies of its bylaws and any amendments thereto with the governor and public service commission.

Approved March 8, 2005
Filed March 8, 2005

MOTOR VEHICLES

CHAPTER 322

HOUSE BILL NO. 1229

(Representatives Kreidt, Devlin, Uglen)
(Senators Brown, Espesgard, J. Lee)

MOBILITY-IMPAIRED PARKING PERMITS

AN ACT to create and enact a new subsection to section 39-01-15 of the North Dakota Century Code, relating to mobility-impaired parking permits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-01-15 of the North Dakota Century Code is created and enacted as follows:

The department shall issue a mobility-impaired parking permit for a vehicle owned and operated by care providers licensed by the state, veterans-related organizations, and other entities that regularly transport mobility-impaired individuals for use by those providers and entities to park in designated parking spaces while transporting mobility-impaired individuals.

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

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 323

SENATE BILL NO. 2135

(Transportation Committee)

(At the request of the Department of Transportation)

LICENSE PLATES AND BRANCH OFFICE FEES

AN ACT to amend and reenact sections 39-02-03, 39-04-02.1, and 39-04-10 of the North Dakota Century Code and section 9 of chapter 331 of the 2001 Session Laws, relating to motor vehicle branch office fees, address corrections, renewal of amateur radio license plates, and Lewis and Clark license plates; and to repeal section 8 of chapter 331 of the 2001 Session Laws, relating to the expiration of authority to issue Lewis and Clark license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-02-03 of the North Dakota Century Code is amended and reenacted as follows:

39-02-03. Powers and duties of director and department. The director, subject to the approval of the governor, may adopt and enforce such administrative rules and designate such agencies and establish such branch offices as may be necessary to carry out the laws applicable to the director's office and department. The director shall provide suitable forms for applications, registration cards, license number plates, and all other forms requisite for the operation of the director's office and department, and shall prepay all transportation charges thereon. In addition, the director shall provide for a uniform maximum fee schedule for the various services provided by the branch offices. Any branch office may establish a different fee schedule if the schedule does not contain a fee that exceeds a maximum fee established by the director and is approved by the director. All branch office ~~personnel~~ managers must be bonded. The department and the officers thereof shall enforce the provisions of all laws pertaining to the director and the department.

SECTION 2. AMENDMENT. Section 39-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

39-04-02.1. Change of address. Whenever any person after making application for or obtaining the registration of a vehicle moves from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the department ~~in writing~~ of the person's old and new addresses.

SECTION 3. AMENDMENT. Section 39-04-10 of the North Dakota Century Code is amended and reenacted as follows:

39-04-10. Special plates for amateur radio station licenseholders. Owners of motor vehicles required to be registered under subdivisions a and b of subsection 2 of section 39-04-19, who hold an unrevoked and unexpired official amateur radio station license issued by the federal communications commission, Washington, D.C., may receive special plates. The plates will be issued upon application to the department, accompanied by proof of ownership of the amateur radio station license, compliance with the state motor vehicle laws relating to

registration and licensing of motor vehicles, and payment of the regular license fee, as prescribed under the North Dakota motor vehicle laws. The special plates will be issued in lieu of the plates ordinarily issued, and must have inscribed on them the official amateur radio call letters of the applicant as assigned by the federal communications commission. ~~The application must be filed by October first prior to the year of issuance.~~

SECTION 4. AMENDMENT. Section 9 of chapter 331 of the 2001 Session Laws is amended and reenacted as follows:

SECTION 9. EFFECTIVE DATE. Section 2 of this Act is effective for registrations due after June 30, 2001. Section 1 of this Act becomes effective on January 1, 2003. ~~Section 8 of this Act becomes effective on January 1, 2007.~~

SECTION 5. REPEAL. Section 8 of chapter 331 of the 2001 Session Laws is repealed.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 324

SENATE BILL NO. 2101

(Transportation Committee)

(At the request of the Department of Transportation)

MOTOR VEHICLE PERMITS, REGISTRATION, AND DEFINITIONS

AN ACT to create and enact a new subsection to section 39-04-05 and a new subsection to section 39-04-06 of the North Dakota Century Code, relating to mobility impaired parking permits and grounds for refusing or suspending a vehicle registration; and to amend and reenact subdivision 1 of subsection 2 of section 39-04-18 and subsection 1 of section 57-40.3-01 of the North Dakota Century Code, relating to registration of house mover vehicles and the definition of an all-terrain vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-04-05 of the North Dakota Century Code is created and enacted as follows:

When a motor carrier has been ordered out of service by the federal motor carrier safety administration.

SECTION 2. A new subsection to section 39-04-06 of the North Dakota Century Code is created and enacted as follows:

When a motor carrier has been ordered out of service by the federal motor carrier safety administration.

SECTION 3. AMENDMENT. Subdivision 1 of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- I. Motor vehicles owned and operated by ~~the holder of a valid building mover's permit issued by the public service commission, a resident building mover~~ or by a resident well driller; provided, however, that such vehicles are used only for moving buildings or building moving equipment, or are used only for drilling water wells or moving water well-drilling equipment; provided, further, that such vehicles display a license plate issued by the director upon the payment of a fee of twenty-five dollars for two axle trucks, fifty dollars for tandem axle trucks and single axle truck-tractor units, and seventy-five dollars for each tandem axle truck-tractor unit.

Any vehicle which has been issued this special motor vehicle license may be registered under the regular motor vehicle registration law, by payment of the difference between the amount paid for the special motor vehicle license and the regular registration fee for such vehicle.

Any vehicle which has been issued this special motor vehicle license and is found being operated upon the highways of

this state without being equipped with special house-moving or well-drilling equipment shall forfeit the fee paid and, in addition, must be required to register under the regular motor vehicle registration law of this state. None of the above limitations may be construed as restricting the operation of the special licensed vehicle when such operation would not require a greater fee than that paid for this operation.

¹⁶¹ **SECTION 4. AMENDMENT.** Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, ~~having a dry weight of one thousand pounds [453.59 kilograms] or less,~~ traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

Approved April 7, 2005
Filed April 12, 2005

¹⁶¹ Section 57-40.3-01 was also amended by section 4 of House Bill No. 1055, chapter 569, and section 14 of House Bill No. 1342, chapter 344.

CHAPTER 325

SENATE BILL NO. 2368

(Senators Robinson, Wardner)
(Representatives N. Johnson, Metcalf, Mueller)

NONPROFIT ORGANIZATION LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to organization number plates.

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:

Public or nonprofit organization number plate.

1. The director shall develop an organization number plate program for distinctive number plates for qualifying public and for nonprofit organizations recognized by the internal revenue service as tax exempt under 26 U.S.C. 501(c)(3). When appropriate, the department shall design a distinctive number plate to minimize the changes to a single application of overlay on the left side of the number plate. The organization may submit a design for the distinctive number plate for approval by the director. Upon approval by the director and proper application with proof of a minimum of four hundred applicants for a certain organization's number plate, the director shall include the number plate in the organization number plate program.
2. The following organizations do not qualify for an organization number plate: out-of-state colleges and universities; groups within high schools, junior colleges, universities, and technical schools, including individual boosters, athletic boosters, and similar groups; unions; political organizations; religious organizations; groups that promote racial or social disharmony; and public offices.
3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the gross weight of which equals or exceeds ten thousand pounds [4535.92 kilograms].
4. The director shall deposit ten dollars of the additional organization number plate fee in the highway tax distribution fund and transfer monthly fifteen dollars to the proper organization to support programs of that organization.

CHAPTER 326

SENATE BILL NO. 2348

(Senators Nething, Robinson, Trenbeath)
(Representatives Delmore, Headland, Weisz)

PUBLIC TRANSPORTATION FUNDING

AN ACT to amend and reenact sections 39-04.2-03 and 39-04.2-04 of the North Dakota Century Code, relating to funding of public transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04.2-03 of the North Dakota Century Code is amended and reenacted as follows:

39-04.2-03. Additional registration fee - Deposit in fund. At the time of registering a motor vehicle subject to registration under section 39-04-19, the owner shall pay to the director in addition to the registration fee a fee of ~~two~~ three dollars for each motor vehicle registered. The fee must be deposited with the state treasurer, who shall credit the fee to the public transportation fund.

SECTION 2. AMENDMENT. Section 39-04.2-04 of the North Dakota Century Code is amended and reenacted as follows:

39-04.2-04. Distribution of funds.

1. Moneys appropriated by the legislative assembly to the public transportation fund must be disbursed under guidelines issued by the director. The funds must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director.
2. Following authorization of the director, the state treasurer shall pay the public transportation funds to transportation providers in each county. Each county shall receive ~~twelve~~ eighteen thousand ~~two~~ three hundred dollars plus one dollar and fifty cents per capita of population in the county, based upon the latest regular or special official federal census. Each year the director shall increase or decrease the one dollar and fifty cents per capita amount in order to distribute all funds appropriated for the biennium. If there are multiple transportation providers in one county, then the base amount of ~~twelve~~ eighteen thousand ~~two~~ three hundred dollars must be divided equally among the providers and the additional per capita amount must be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county.

3. Unless otherwise provided by law, any moneys remaining in the fund at the end of each biennium must be retained in the public transportation fund for redistribution.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 327

HOUSE BILL NO. 1044

(Legislative Council)
(Transportation Committee)

MOTOR VEHICLE LIEN FILING

AN ACT to amend and reenact sections 39-05-05, 39-05-16.1, 39-05-17, and 39-05-33 of the North Dakota Century Code, relating to the filing of liens on a motor vehicle; to repeal section 39-05-17.1 of the North Dakota Century Code, relating to the delivery of a certificate of title; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-05 of the North Dakota Century Code is amended and reenacted as follows:

39-05-05. Application for certificate of title - Contents - Fee to accompany.

1. An application for a certificate of title must be made upon ~~an appropriate~~ a form furnished or approved provided by the department and must contain all of the following:
 - a. A full description of the vehicle, including the name of the manufacturer, either the engine, serial, or identification number, and any other distinguishing marks. The department may assign a vehicle identification number for a vehicle not otherwise assigned a number. The assigned number must be permanently affixed to the vehicle and the department may require the vehicle be inspected before issuing a certificate of title for the vehicle.
 - b. A statement as to whether the vehicle is new or used.
 - c. A statement of the applicant's title and ~~of any liens or encumbrances upon the vehicle~~ the name and address of each lienholder in the order of priority.
 - d. The name and address of the person to whom the certificate of title must be delivered.
 - e. ~~The names and addresses of any lienholders in the order of their priority and the dates of their security agreements.~~
 - f. If applicable, a statement as to whether the vehicle ~~for which certificate of title is sought~~ is a specially constructed, reconstructed, or foreign vehicle; such facts must be stated in the application.
 - g. f. The ~~buyer's~~ owner's street address, city, and county, or township and county, of residence ~~and the~~ . A dealer shall make specific inquiry relative thereto as to this information before filling in ~~such~~ the information on the application.

- ~~h.~~ g. The department may require odometer disclosure information as required under the Truth in Mileage Act of 1986 [Pub. L. 99-579].
 - ~~i.~~ h. ~~Such Any~~ other information as required by the department ~~may require~~.
- 2. The owner of every vehicle ~~which that~~ has been registered outside of this state shall surrender to the department the certificate of title and registration card or other evidence ~~which that~~ may satisfy the department the applicant is the lawful owner or possessor of the vehicle.
- 3. If the vehicle for which certificate of title is sought is a new vehicle, ~~no a~~ certificate of title may not be issued unless a certificate of origin executed by the manufacturer of ~~such the~~ vehicle is attached to the application for registration or is attached to the application for the certificate of title for the vehicle. If the new vehicle for which certificate of title is sought is of foreign manufacture, the certificate of origin must be furnished by the importer of the vehicle. The manufacturer or importer of all new vehicles shall designate the total shipping weight of the vehicle on the certificate of origin.
- 4. When a new vehicle is purchased from a dealer, the application for the certificate of title must include a statement of the transfer by the dealer ~~and of any lien retained by the dealer or other lienholder. If the title to the vehicle is reserved by the dealer or other lienholder, the certificate must be made out to the dealer or lienholder and delivered to that person as the owner or lienholder of the vehicle.~~
- 5. ~~Every~~ Each application must be accompanied by a fee of five dollars, which is in addition to any fee charged for the registration of ~~such the~~ vehicle.

SECTION 2. AMENDMENT. Section 39-05-16.1 of the North Dakota Century Code is amended and reenacted as follows:

39-05-16.1. Release of a security interest.

- 1. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, the lienholder ~~shall~~, within ten days after demand, and in any event within thirty days of the satisfaction, ~~shall~~ execute a release of the lienholder's security interest as in a manner prescribed by the department ~~prescribes~~. The lienholder shall:
 - a. Mail or deliver the certificate of title and release to the next lienholder named on the certificate of title, who ~~shall~~, within thirty days of receipt, shall mail or deliver the certificate of title, release, and a fee of five dollars to the department. The department shall issue and mail or deliver a new certificate of title to the first lienholder named on the new certificate of title.
 - b. If there are no other lienholders named on the certificate of title, mail or deliver the certificate of title and release to the owner or ~~any other person who delivers to the lienholder an authorization from the owner to receive the certificate of title and release. The~~ the owner's designee. Within thirty days of receipt, the person

receiving the certificate of title and release shall; ~~within thirty days of receipt~~, mail or deliver the certificate of title, release, and a fee of five dollars to the department. The department may prescribe further application procedures and, upon determining that there has been a proper compliance with these procedures, shall issue a new certificate of title and mail or deliver it to the owner or ~~any person the owner authorizes to receive it~~ the owner's designee.

2. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lienholder, the lienholder whose security interest is satisfied shall execute, within ten days after demand and; in any event within thirty days of the satisfaction, ~~execute~~ a release in the form the department prescribes and deliver the release to the owner or ~~any person who delivers to the lienholder an authorization from the owner to receive it~~ the owner's designee. Upon receipt of a release delivered by the owner to the lienholder in possession of the certificate of title, that lienholder in possession of the certificate of title shall either deliver the certificate of title to the owner or the person authorized by the owner for delivery to the department; or, upon receipt of the release, mail or deliver it with the release and the certificate of title to the department which shall, upon Upon the payment of a five dollar fee, the department shall issue a new certificate.
3. Notwithstanding this section, a lienholder who uses an electronic lien notification system shall follow the procedure adopted for that system by the department.

SECTION 3. AMENDMENT. Section 39-05-17 of the North Dakota Century Code is amended and reenacted as follows:

39-05-17. Transfer of title of vehicle - Endorsement required - Certificate of title delivered - New certificate obtained - Penalty.

1. The owner of a motor vehicle who ~~sells or~~ transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle; ~~with a statement whether there are liens or encumbrances thereon, which statement must be verified by the owner~~. The owner shall include on the assignment and warranty of title the name of the purchaser transferee and the selling price of the vehicle.
2. ~~The~~ If legal title passes to the transferee, the owner shall deliver the endorsed certificate of title to the purchaser if title passes to the purchaser transferee within fifteen days.
3. If the legal title does not pass passes to the purchaser under the terms of the contract for sale of the vehicle a lienholder rather than the transferee, the lienholder transferee shall endorse thereon a statement that the lienholder holds the lien, the date thereof, and the name of the purchaser, and shall send the certificate of title to the department with an application of the purchaser for a new certificate of title showing the name names of the new owner, and lienholder, and the date of the lien of the lienholder, which. The certificate of title when issued must be ~~returned sent~~ by the department to the lienholder, ~~who shall retain the same in the lienholder's possession until the terms of the contract are complied with by the purchaser, and thereupon, after showing the lien has been paid and satisfied the lienholder shall deliver the certificate of~~

title properly assigned to the purchaser. The purchaser or the department may use an electronic lien notification procedure in lieu of sending a certificate of title to a lienholder.

4. Within thirty days after receipt, the transferee shall ~~present~~ deliver the endorsed and assigned certificate of title to the department, within thirty days after the receipt thereof, accompanied by with a transfer fee of five dollars, and shall make an application for and obtain a new certificate of title for the vehicle. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked whenever if the purchaser or transferee fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within the prescribed thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery is must be made to the purchaser owner.
5. A violation of the provisions of this section by an owner, lienholder, or transferee is a class B misdemeanor.

SECTION 4. AMENDMENT. Section 39-05-33 of the North Dakota Century Code is amended and reenacted as follows:

39-05-33. General penalty. Any person violating any of the provisions provision of this chapter for which another penalty is not provided specifically is guilty of a class B misdemeanor. This section does not apply to the department.

SECTION 5. REPEAL. Section 39-05-17.1 of the North Dakota Century Code is repealed.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 328

HOUSE BILL NO. 1225

(Representatives Ruby, Bellew, Kretschmar, Metcalf)
(Senators Mathern, Tollefson)

MOTOR VEHICLE OPERATOR'S LICENSE DENIAL

AN ACT to amend and reenact subsection 3 of section 39-06-03 of the North Dakota Century Code, relating to individuals to whom motor vehicle operator's licenses may not be issued.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

3. To any ~~person~~ individual who is ~~an~~ a habitual drunkard, or is ~~an~~ a habitual user of narcotic drugs, or is ~~an~~ a habitual user of any other drug to a degree ~~which~~ that renders the ~~person~~ individual incapable of safely driving a motor vehicle. The director has good cause to believe that an individual is a habitual drunkard or user if the individual has three or more convictions for violating section 39-08-01, or equivalent ordinance, or three or more administrative suspensions under chapter 39-20 within a five-year period. An individual who is a habitual drunkard or user may provide the director with adequate proof of the removal of the habit which may include satisfactory completion of a licensed alcohol or drug treatment program.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 329

HOUSE BILL NO. 1136

(Transportation Committee)

(At the request of the Department of Transportation)

MINOR'S PERMITS, LICENSES, AND SUSPENSIONS

AN ACT to amend and reenact sections 39-06-08, 39-06-24, 39-06-37, 39-06.1-14, subsection 19 of section 39-06.2-02, and subsection 2 of section 39-06.2-10 of the North Dakota Century Code, relating to an application of a minor for an instruction permit or operator's license, failure to surrender a suspended license, definition of hazardous material, and disqualification of commercial driving privileges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 initial instruction permit or operator's license must be signed and verified before a person authorized to administer oaths or the 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 2. AMENDMENT. Section 39-06-24 of the North Dakota Century Code is amended and reenacted as follows:

39-06-24. Authority to cancel licenses. The director ~~may~~ shall cancel any operator's license, permit, or nondriver photo identification card upon determining that the person is not entitled to the issuance of the document under the laws of this state or that said person failed to give the required or correct information on the application or the fee was in the form of an insufficient fund or no-account check. The making of a false statement in any application for an operator's license, permit, or nondriver photo identification card, concerning the applicant's age or the prior loss of driving privileges through a cancellation, suspension, revocation, or similar sanction in any state, is grounds for the director to cancel any document or privilege issued on the basis of the application.

SECTION 3. AMENDMENT. Section 39-06-37 of the North Dakota Century Code is amended and reenacted as follows:

39-06-37. Surrender and return of license - Duration of multiple suspensions and revocations for separate violations.

1. The director upon canceling, ~~suspending~~, or revoking a license shall require that such license must be surrendered to and be retained by the director.
2. If any person fails immediately to return to the director any license or permit which has been canceled, ~~suspended~~, or revoked, the order of the director shall authorize any peace officer or the director's designated

agent to secure possession thereof and return the same to the director. A suspension, revocation, or cancellation ordered under this title must be deemed to have commenced when the order is delivered to the licensee at the address of record in the department pursuant to section 39-06-20. Constructive delivery under this section must be considered as occurring forty-eight hours after the order is mailed to the person by regular mail.

3. Unless otherwise specifically provided in this title, any suspension, revocation, cancellation, or denial of licensing ordered under any provision of this title must be in addition to, and run consecutive to, any other or existing suspension, revocation, cancellation, or denial of licensing ordered for a separate violation.

SECTION 4. AMENDMENT. Section 39-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-14. Failure to surrender license. The director shall extend the period of ~~suspension or~~ revocation in all cases that involve a time period, within this title, when the person whose license or permit has been ~~suspended or~~ revoked fails to surrender such license or permit within forty-eight hours after delivery of the order of ~~suspension or~~ revocation. Such period of ~~suspension or~~ revocation must be extended by one day for each day such person fails to surrender such license. Delivery of the order must be deemed to have occurred seventy-two hours after the order is mailed by regular mail to the address of record in the department under section 39-06-20.

SECTION 5. AMENDMENT. Subsection 19 of section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

19. "Hazardous materials" ~~has the meaning as that found in section 103 of the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]~~ means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

SECTION 6. AMENDMENT. Subsection 2 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, 7, 9, or 11, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after July 1, 1989, may be considered in applying this subsection.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 330

SENATE BILL NO. 2099

(Transportation Committee)

(At the request of the Department of Transportation)

DRIVER'S LICENSE REVISIONS

AN ACT to amend and reenact sections 39-06-30 and 39-06-34, subsection 1 of section 39-06-42, sections 39-16-03.1 and 39-20-01, subsection 2 of section 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to the meaning of the term conviction, time required for a decision after a hearing, driving while license is suspended, when entries on a driving record are confidential, the implied consent advisory for refusal to submit to alcohol test, procedure to negate effect of a refusal, and suspension of person under twenty-one years of age for driving with a prohibited alcohol concentration; and to repeal sections 39-16-30 and 39-16.1-21 of the North Dakota Century Code, relating to driving while a license is suspended.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-30 of the North Dakota Century Code is amended and reenacted as follows:

39-06-30. Conviction - Meaning and effect. For purposes of this title the term "conviction" means a final order or judgment of conviction by the North Dakota supreme court or, any lower court having jurisdiction, a tribal court, or a court in another state provided that no appeal is pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is deferred under subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 2. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be

conducted under section 39-06-33 and the hearing officer's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

SECTION 3. AMENDMENT. Subsection 1 of section 39-06-42 of 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.

SECTION 4. AMENDMENT. Section 39-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-16-03.1. Entries on driver record abstract confidential. Notwithstanding any other provision of this chapter, the following entries on a driver record or abstract are not available to the public, except for statistical purposes, other than by order of a court of competent jurisdiction accompanied by a fee of twenty-five dollars:

1. An entry more than three years old.
2. After the period of suspension ceases, an entry concerning a suspension under subsection 4, 5, 6, or 7 of section 39-06-03 or subsection 2, 5, or 6 of section 39-06-32.
3. An entry concerning a suspension as the result of a person under twenty-one years of age who has an alcohol concentration of at least two one-hundredths of one percent but under ~~ten~~ eight one-hundredths of one percent by weight within two hours after driving or being in actual physical control of a vehicle.

¹⁶² **SECTION 5. AMENDMENT.** Section 39-20-01 of 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

¹⁶² Section 39-20-01 was also amended by section 16 of House Bill No. 1088, chapter 195.

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~~ four 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 6. AMENDMENT. Subsection 2 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:
 - a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty

within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;

- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued;
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
- f. The person has never been convicted under section 39-08-01 or equivalent ordinance.

SECTION 7. AMENDMENT. Subsection 1 of section 39-20-04.1 of 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 eight 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 and the violation was for an alcohol concentration of at least eight 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, and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

- c. 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 with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
- d. 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 once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of 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 with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within 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 and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

SECTION 8. REPEAL. Sections 39-16-30 and 39-16.1-21 of the North Dakota Century Code are repealed.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 331

SENATE BILL NO. 2274

(Senators Nething, Espgaard, Heitkamp)
(Representatives Carlson, Hawken, Weiler)

VEHICLE WEIGHT AND SIZE LIMITATIONS

AN ACT to create and enact two new sections to chapter 39-21 of the North Dakota Century Code, relating to axles on a vehicle; to amend and reenact subsection 2 of section 39-06.1-06 and sections 39-06.1-09, 39-12-02, 39-12-05.3, and 39-12-08 of the North Dakota Century Code, relating to weight and size limitations and permits for vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶³ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.
 - d. A violation of subsection ~~2~~ 1 of section 39-12-02, a fee of one hundred dollars.
 - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.

SECTION 2. AMENDMENT. Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-09. Moving violation defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; subsection ~~2~~ 1 of section 39-12-02; sections 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions

¹⁶³ Section 39-06.1-06 was also amended by section 3 of Senate Bill No. 2208, chapter 340.

b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 4 of section 39-10-26, sections 39-21-44 and 39-21-45.1, and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

¹⁶⁴ **SECTION 3. AMENDMENT.** Section 39-12-02 of 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 permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Every 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 this chapter for any person to violate any of the terms or conditions of the permit. All permits for the movement of excessive size and weight on state highways must be for single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. ~~A person operating a motor vehicle, or the owner of the motor vehicle being operated, without a permit as specified in subsection 4 must be assessed a fee of one hundred dollars.~~
3. ~~Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.~~
4. 3. 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 for use in the construction and maintenance of highways and operating expenses of the department of transportation. Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:

¹⁶⁴ Section 39-12-02 was also amended by section 1 of House Bill No. 1357, chapter 337.

- a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
 - 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 faxing a permit is five dollars.
 - f. The fee for a single trip permit is twenty dollars per trip.
 - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
- 5- 4. 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.

SECTION 4. AMENDMENT. Section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

39-12-05.3. Weight limitations for vehicles on highways other than the interstate system.

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed nineteen thousand pounds [8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
6. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader if the weight of a single axle does not exceed twenty-two thousand pounds [9979.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled agricultural chemical applicator if the weight of a single axle does not exceed twenty-two thousand pounds [9979.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway

patrol shall issue a seasonal permit for the commercial movement of vehicles exempted by this subsection. The seasonal permit issued under this subsection or under subdivision d of subsection 1 of section 39-12-04 entitles an individual with the permit to operate a vehicle as allowed by either of these provisions. A seasonal permit issued under this subsection is subject to the requirements of subdivision d of subsection 1 of section 39-12-04.

7. The weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption but the weight limitations in section 39-12-05 do apply to that equipment. For every vehicle approved for exemption, the highway patrol shall issue a nontransferable bridge length permit valid for a single trip or a calendar year.

SECTION 5. AMENDMENT. Section 39-12-08 of the North Dakota Century Code is amended and reenacted as follows:

39-12-08. Penalty for violation of chapter. Any ~~A~~ person violating any of the provisions of sections 39-12-04, 39-12-05, or 39-12-06 operating a motor vehicle or the owner of the motor vehicle being operated without a permit as specified in this chapter must be assessed a fee of ~~twenty~~ one hundred dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of ~~ten~~ twenty dollars. Violating the conditions of any permit type automatically voids the permit.

SECTION 6. Two new sections to chapter 39-21 of the North Dakota Century Code are created and enacted as follows:

Retractable axle control requirements.

1. For a motor vehicle manufactured after July 31, 2005, variable load suspension or retractable axles, or both, raised or lowered by air, hydraulic, or other pressure must have the lock or pressure regulator valve, or both, positioned outside the cab and inaccessible from the driver's compartment if there is more than one variable load suspension axle or retractable axle, or a combination of each.
2. The control to lift and lower a retractable or variable load suspension axle may be accessible in the driver's compartment, but also may not function as the pressure control device unless allowed by subsection 1.

Requirement for steerable, casting, or pivoting axles. A single unit vehicle or any vehicle in combination may not be equipped with more than four axles unless the additional axles are steerable, casting, or pivoting axles.

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

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 332

HOUSE BILL NO. 1054

(Representatives Carlisle, Maragos, Porter, Iverson)
(Senators Dever, Robinson)

TEMPORARY RESTRICTED DRIVER'S LICENSES

AN ACT to amend and reenact section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted driver's licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition interlock device.

1. Except as provided under subsection 2, if the licensing authority director has suspended a license under section 39-06.1-10, or if ~~the director~~ has extended a suspension or revocation under section 39-06-43, ~~for more than seven days, the authority may, for good cause, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed; for the remainder of the suspension period.~~
2. If the licensing authority director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the authority director may, in accordance with this section, for good cause, and upon written application of the offender, issue for good cause a temporary restricted license 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 director 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 the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an addiction facility or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The 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 during the two-year prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The licensing authority director 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. 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.

- ~~3-~~ 4. A restricted license issued under this section ~~may authorize~~ is solely for the use of a motor vehicle ~~only~~ during the licensee's normal working hours, ~~or~~ and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 333

SENATE BILL NO. 2102

(Transportation Committee)

(At the request of the Department of Transportation)

DUI REPEAT OFFENSES

AN ACT to amend and reenact subsection 3 of section 39-08-01 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor repeat offenders and impounding motor vehicle license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon conviction of a second or subsequent offense within five years under this section or equivalent ordinance, the court ~~may~~ must order the motor vehicle number plates of all of the motor ~~vehicle~~ vehicles 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. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a coowner of the motor vehicle, but not including the offender.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 334

HOUSE BILL NO. 1098

(Transportation Committee)

(At the request of the Department of Transportation)

ACCIDENT REPORT COPIES

AN ACT to amend and reenact section 39-08-13 of the North Dakota Century Code, relating to providing copies of accident reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁵ **SECTION 1. AMENDMENT.** Section 39-08-13 of the North Dakota Century Code is amended and reenacted as follows:

39-08-13. Accident report forms.

1. The director shall prepare and supply to law enforcement agencies, garages, and other suitable agencies or individuals forms for accident reports required by law, appropriate with respect to the purposes to be served. The reports to be made by investigating officers shall call for sufficiently detailed information to disclose the cause of a traffic accident, conditions then existing, persons and vehicles involved, and whether the requirements for the deposit of security under section 39-16-05 are applicable.
2. Every accident report required to be made to the director must be made in the appropriate format or approved by the director and must contain all the information required therein unless not available.
3. Every law enforcement officer who investigates a vehicle accident for which a report must be made as required in this chapter shall forward a report of such accident to the department within ten days after the accident.
4. The reports required to be forwarded by law enforcement officers and the information contained therein shall not be privileged or held confidential. If, however, the investigating officer expresses an opinion as to fault or responsibility for the accident, the opinion is confidential and not open to public inspection, except as provided in subsection 5.
5. Upon affirmation by a party to the accident, a party's legal representative, or the insurer of any party to the accident that the investigating officer's opinion is material to a determination of liability and upon payment of a fee of five dollars, the director may release a copy of the investigating officer's opinion to the entity requesting the

¹⁶⁵ Section 39-08-13 was also amended by section 2 of House Bill No. 1286, chapter 377.

information. The request must be made on an appropriate form approved by the director.

6. Upon request of any person and upon payment of a fee of two dollars, the director may furnish to a requestor a copy of that portion of an investigating officer's accident report which does not disclose the opinion of the reporting officer, if the report shows that the accident is one for which a driver is required to file a report under section 39-08-09.
7. Copies of accident reports are not admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.
8. The director, without a request under subsection 4 or 5, may send a copy of an accident report to the registered owner of each vehicle involved as indicated by the report.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 335

HOUSE BILL NO. 1095

(Transportation Committee)

(At the request of the Department of Transportation)

CONSTRUCTION ZONE SPEED LIMITS

AN ACT to amend and reenact subsection 2 of section 39-09-02 and section 39-09-07.1 of the North Dakota Century Code, relating to highway construction zone speed limits and speed limit reductions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The director may designate and post special areas of state highways where lower speed limits apply. Differing limits may be established for different times of the day within highway construction zones which are effective when posted upon appropriate fixed or variable speed limit signs.

SECTION 2. AMENDMENT. Section 39-09-07.1 of the North Dakota Century Code is amended and reenacted as follows:

39-09-07.1. Speed zones - Reduction limitation. ~~No~~ Except for highway construction zones, no street, road, or highway in the state highway system or any other township, county, or state road or highway may be posted in a manner which reduces the maximum speed limit on the street, road, or highway by more than twenty miles [32.19 kilometers] per hour between any two signs so posted in a speed zone. The maximum speed limit reduction between any two signs posted in a highway construction zone may not exceed thirty miles [48.28 kilometers] per hour.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 336

HOUSE BILL NO. 1096

(Transportation Committee)

(At the request of the Department of Transportation)

TRAFFIC CONTROL DEVICE INTERFERENCE

AN ACT to amend and reenact section 39-10-07.3 of the North Dakota Century Code, relating to interference with official traffic control devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-07.3 of the North Dakota Century Code is amended and reenacted as follows:

39-10-07.3. Interference with official traffic-control device or railroad sign or signal. ~~No~~ A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, ~~or~~ remove, or interfere with the operation of any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 337

HOUSE BILL NO. 1357

(Representatives Monson, Brandenburg, Pollert, Weisz)
(Senator Trenbeath)

COMBINATION VEHICLE PERMIT FEES

AN ACT to amend and reenact subsection 4 of section 39-12-02 of the North Dakota Century Code, relating to longer combination vehicle permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

4. 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 for use in the construction and maintenance of highways and operating expenses of the department of transportation. Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:
 - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
 - 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 faxing a permit is five dollars.
 - f. The fee for a single trip permit is twenty dollars per trip.
 - g. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.

Approved April 12, 2005
Filed April 13, 2005

¹⁶⁶ Section 39-12-02 was also amended by section 3 of Senate Bill No. 2274, chapter 331.

CHAPTER 338

HOUSE BILL NO. 1099

(Transportation Committee)

(At the request of the Department of Transportation)

VEHICLE DEALER BONDS, LICENSES, AND PENALTIES

AN ACT to amend and reenact sections 39-18-01, 39-18-02, 39-22-05, 39-22-14, 39-22-18, 39-22.1-02, 39-22.1-03, 39-22.3-03, and 39-22.3-05 of the North Dakota Century Code, relating to penalties assessed against vehicle dealers, bond requirements for vehicle dealers, renewal of a dealer license, and unlicensed vehicle dealers; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-18-01 of the North Dakota Century Code is amended and reenacted as follows:

39-18-01. Mobile home dealer's license - Fees - Dealer's plates - Penalty.

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 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 prescribes and furnishes, and the application must be accompanied by an annual fee of thirty-five dollars 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 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 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 the mobile homes bearing the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by the dealer, and the dealer's agents and servants, during the year of the registration. 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 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.

Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a mobile home dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

SECTION 2. AMENDMENT. Section 39-18-02 of the North Dakota Century Code is amended and reenacted as follows:

39-18-02. Bond required. Before the issuance of a mobile home dealer's license, as provided by law, the applicant for such license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by said applicant as a dealer, if such license be issued to the dealer, that such dealer will comply with all the laws of the state of North Dakota pertaining to such business, and regulating or being applicable to the business of said dealer as a dealer in mobile homes, and indemnifying any person dealing or transacting business with such dealer in connection with any mobile home from any loss or damage occasioned by the failure of such dealer to comply with the provisions of the laws of the state of North Dakota, including the furnishing of a proper and valid certificate of title to the vendee of a mobile home within fifteen days of the sale of such mobile home, and to the vendee of a travel trailer as defined by section 57-55-01 within fifteen days of the sale of such travel trailer, and that such bond must be filed with the director prior to the issuance of the license herein provided for. Provided, however, that the aggregate liability of the surety to all such persons for all such losses or damages may, in no event, exceed the amount of such bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any such proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

SECTION 3. AMENDMENT. Section 39-22-05 of the North Dakota Century Code is amended and reenacted as follows:

39-22-05. Bond required. Before the issuance of a motor vehicle dealer's license, as provided by law, the applicant for the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company, licensed and qualified to do business within the state of North Dakota, which bond must run to the state of North Dakota, be in the amount of twenty-five thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer, if the license is issued to the dealer, that such dealer will comply with all of the statutes of the state of North Dakota regulating or being applicable to the business of the dealer as a dealer in motor vehicles, and indemnifying any person

dealing or transacting business with the dealer in connection with any motor vehicle from any loss or damage occasioned by the failure of the dealer to comply with any of the provisions of this title, including the furnishing of a proper and valid certificate of title to the motor vehicle involved in any such transaction, and that the bond shall be filed with the director prior to the issuance of license provided by law. The aggregate liability of the surety of all persons, however, may in no event exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to the proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

SECTION 4. AMENDMENT. Section 39-22-14 of the North Dakota Century Code is amended and reenacted as follows:

39-22-14. Motor vehicle dealer license - Fees - Penalty. It is unlawful for any person to engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license. The motor vehicle dealer license fee is one hundred dollars per year and with which must be issued one dealer plate. A nonrefundable fee of one hundred dollars must be charged for the initial inspection of an application for a dealer license and must accompany the initial application for a new or used motor vehicle dealer license. The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, social security number. Any person violating a provision of this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department must suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation. Any person not licensed as a dealer under this section who has been previously found to be in violation of this section, and assessed the fees specified, is guilty of a class B misdemeanor if a third or subsequent violation occurs.

SECTION 5. AMENDMENT. Section 39-22-18 of the North Dakota Century Code is amended and reenacted as follows:

39-22-18. Renewal of dealer license - Fees - Minimum sales requirement - Penalty. A dealer license issued under this chapter expires on December thirty-first of each year. A licensed dealer may apply for renewal of the dealer's license on forms prescribed by the department and payment of the dealer license and dealer plate fees required by this chapter. The department shall not renew the dealer license of any applicant who has made less than four retail motor vehicle sales during the previous year. The department may adopt administrative rules to limit the number of dealer plates available to an applicant based on the applicant's motor vehicle sales history. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed.

SECTION 6. AMENDMENT. Section 39-22.1-02 of the North Dakota Century Code is amended and reenacted as follows:

39-22.1-02. Bond required. Before the issuance of a trailer dealer's license, as provided by law, the applicant for such license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by said applicant as a dealer, if such license be issued to the applicant, that such dealer will comply with all the laws of the state of North Dakota pertaining to such business, and regulating or being applicable to the business of said dealer as a dealer in trailers, and indemnifying any person dealing or transacting business with such dealer in connection with any trailer from any loss or damage occasioned by the failure of such dealer to comply with the provisions of the laws of the state of North Dakota, including, but not limited to, the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of such trailer, and that such bond shall be filed with the director prior to the issuance of the license herein provided for. Provided, however, that the aggregate liability of the surety to all such persons for all such losses or damages may, in no event, exceed the amount of such bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any such proceedings. Any applicant bonded pursuant to the provisions of chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section whenever the bond issued pursuant to chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

SECTION 7. AMENDMENT. Section 39-22.1-03 of the North Dakota Century Code is amended and reenacted as follows:

39-22.1-03. Suspension or revocation of dealer's license - Penalty. The director may suspend or revoke any dealer's license for failure of the licensee to comply with any of the laws of the state of North Dakota governing trailer dealers, or for the failure to comply with the reasonable rules and regulations of the director as established under chapter 28-32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating the provisions of this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

SECTION 8. AMENDMENT. Section 39-22.3-03 of the North Dakota Century Code is amended and reenacted as follows:

39-22.3-03. Issuance of license - Conditions - Penalty. No license may be issued until the applicant furnishes proof satisfactory to the director that the applicant has and will continue to maintain an established place of business. An established central place of business means a permanent enclosed building or structure either owned or leased with a stated periodic rental, at which a permanent business of bartering, trading, and selling of motorcycles, the repair, maintenance, and servicing of motorcycles and the storage of parts and accessories therefor, will be carried out in good faith and not for the purpose of evading this section, and where the business books, records, and files shall be maintained, and does not mean a residence, tents,

temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. Said central place of business may consist of several buildings, or structures, but no building or structure may be located beyond one thousand feet [304.8 meters] from any other buildings or structures of said central place of business. Such central place of business must be located within the state of North Dakota. The licensee must be permitted to use unimproved lots and premises for sales, storage, or display of motorcycles. A nonrefundable fee of fifty dollars will be charged for each inspection and must accompany each initial application for a motorcycle dealer's license. Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motorcycle dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

SECTION 9. AMENDMENT. Section 39-22.3-05 of the North Dakota Century Code is amended and reenacted as follows:

39-22.3-05. Bond required. The license applicant shall furnish a continuous surety bond executed by a surety company, licensed and qualified to do business within the state of North Dakota, which bond must run to the state of North Dakota in the amount of ten thousand dollars and be conditioned upon the faithful compliance by said applicant with all the statutes of the state of North Dakota, regulating or being applicable to a dealer in motorcycles, and indemnifying any person having a motorcycle transaction with said dealer from any loss of damage occasioned by the failure of such dealer to comply with any statutory requirement of such transaction. The bond must be filed with the director prior to the issuance of a license. The aggregate liability of the surety of all persons may in no event exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party of any such proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

SECTION 10. EFFECTIVE DATE. This Act becomes effective on January 1, 2006.

Approved March 8, 2005
Filed March 8, 2005

CHAPTER 339

SENATE BILL NO. 2246

(Senator Traynor)

(Representatives Delmore, D. Johnson, Nicholas)

PARK MODEL TRAILERS

AN ACT to amend and reenact section 39-18-03.2 of the North Dakota Century Code, relating to park model trailers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-18-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-18-03.2. Park model trailer fee.

1. 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.
2. In lieu of subsection 1, upon the request of an owner of a park model trailer, as defined in subsection 2 of section 57-55-10, the department shall register the trailer as a travel trailer for a registration fee of twenty dollars per calendar year. The payment of the fee qualifies the trailer for an exemption under section 57-55-10. The department shall issue a number plate upon payment of the registration fee.
3. Fees collected under this section must be deposited in the highway tax distribution fund.

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

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 340

SENATE BILL NO. 2208

(Senators Espegard, G. Lee, Trenbeath)
(Representatives Delmore, Hawken, Nottestad)

MOTOR VEHICLE CHILD RESTRAINT SYSTEMS

AN ACT to amend and reenact sections 24-02-01.5 and 39-01-01, subdivision c of subsection 2 of section 39-06.1-06, sections 39-08-18, 39-08-19, 39-21-41.2, and 51-20-01, and subsection 9 of section 57-40.3-04 of the North Dakota Century Code, relating to motor vehicle child restraint systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁷ **SECTION 1. AMENDMENT.** Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8 10, 42 14, and 43 15 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8 10, 42 14, and 43 15 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

¹⁶⁷ Section 24-02-01.5 was also amended by section 1 of Senate Bill No. 2154, chapter 341, and section 6 of Senate Bill No. 2217, chapter 94.

¹⁶⁸ **SECTION 2. AMENDMENT.** Section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

39-01-01. Definitions. In this title, unless the context or subject matter otherwise requires:

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.
2. Authorized emergency vehicles:
 - 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 a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and 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.
 - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.
 - (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
 - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.
 - (8) Vehicles operated by or under the control of the director of the parks and recreation department.
 - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.

¹⁶⁸ Section 39-01-01 was also amended by section 25 of House Bill No. 1016, chapter 16, and section 1 of House Bill No. 1342, chapter 344.

- b. Class B authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. Class C authorized emergency vehicles means:
 - (1) Vehicles authorized by state and local division of emergency management organizations.
 - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
 - (3) Vehicles, other than ambulances, used by emergency medical services personnel.
- 3. "Bicycle" means every device propelled solely by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches [50.8 centimeters] in diameter.
- 4. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 8-02-07, is not a "bus".
- 5. "Business district" means the territory contiguous to a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet [91.44 meters] or more is occupied by buildings in use for business.
- ~~5-4-~~ 6. "Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
- 7. "Child restraint system" means a specifically designed device, built-in seating system, or belt-positioning booster that meets the federal motor vehicle safety standards and is permanently affixed to a motor vehicle, is affixed to the vehicle by a safety belt or universal attachment system, or is combined with a federally compliant safety belt system.
- ~~6-~~ 8. "Commercial freighting" means the carriage of things other than passengers, for hire, except that such term does not include:
 - a. The carriage of things other than passengers within the limits of the same city;
 - b. Carriage by local dray lines of baggage or goods to or from a railroad station from or to places in such city or in the immediate vicinity thereof, in this state, and not to exceed two miles [3.22 kilometers] from the corporate or recognized limits of said city; or
 - c. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.

- ~~7.~~ 9. "Commercial passenger transportation" means the carriage of passengers for hire, except that the term does not include:
- a. The carriage of passengers within the limits of a city.
 - b. The carriage by local buslines of passengers to or from a railroad station from or to places within any city or within two miles [3.22 kilometers] of the limits of the city.
 - c. The carriage of passengers under a ridesharing arrangement, as defined in section 8-02-07.
- ~~8.~~ 10. "Commissioner" means the director of the department of transportation of this state, acting directly or through authorized agents as provided by section 24-02-01.3.
- ~~9.~~ 11. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.
- ~~40.~~ 12. "Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- ~~44.~~ 13. "Dealer" means every person, partnership, corporation, or limited liability company engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, limited liability company, or association doing business in several cities or in several locations within a city must be considered a separate dealer in each such location.
- ~~42.~~ 14. "Department" means the department of transportation of this state as provided by section 24-02-01.1.
- ~~43.~~ 15. "Director" means the director of the department of transportation of this state as provided by section 24-02-01.3.
- ~~44.~~ Repealed by S.L. 1989, ch. 72, § 25.
- ~~45.~~ 16. "Driver" means every person who drives or is in actual physical control of a vehicle.
- ~~46.~~ 17. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation and includes all integral parts and body parts, the removal, alteration, or

substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

- ~~47.~~ 18. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.
- ~~48.~~ 19. "Farm tractor" includes every motor vehicle designed and used primarily as a farm implement for drawing plows, moving machines, and other implements of husbandry.
- ~~49.~~ 20. "Farm trailer" includes those trailers and semitrailers towed by a bona fide resident farmer hauling the farmer's own agricultural, horticultural, dairy, and other farm products if the gross weight, not including the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms].
- ~~49.1.~~ 21. "Fifth-wheel travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
- ~~20.~~ 22. "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit [21.11 degrees Celsius], or less, as determined by a tagliabue or equivalent closed-cup test device.
- ~~24.~~ 23. "Foreign vehicle" means every motor vehicle which is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.
- ~~22.~~ 24. "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.
- ~~23.~~ 25. "Guest" means and includes a person who accepts a ride in any vehicle without giving compensation therefor.
- ~~24.~~ 26. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park, or campground containing five or more lots for occupancy by mobile homes, travel trailers, or tents when any part thereof is open for purposes of vehicular travel.
- ~~26.~~ 27. "House car" or "motor home" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:

- a. Cooking facilities.
- b. Icebox or mechanical refrigerator.
- c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
- d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
- e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
- f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

~~26-~~ 28. "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highway.

~~27-~~ 29. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet [9.14 meters] or more apart, then every crossing of each roadway of such divided highway by an intersecting highway must be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet [9.14 meters] or more apart, then every crossing of two roadways of such highways must be regarded as a separate intersection.

~~28-~~ 30. "Intoxicating liquor" means and includes any beverage containing alcohol.

~~29-~~ 31. "Judgment" means any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a claim for relief on an agreement of settlement for such damages.

~~30-~~ 32. "Legal owner" means a person who holds the legal title to a vehicle.

~~31-~~ 33. "Lienholder" means a person holding a security interest in a vehicle.

- ~~32.~~ 34. "Local authorities" includes every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.
- ~~33.~~ 35. "Mail" means to deposit mail properly addressed and with postage prepaid with the United States postal service.
- ~~34.~~ 36. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable person, with due consideration of the totality of circumstances.
- ~~35.~~ 37. "Manufacturer" means any person who manufactures, assembles, or imports and sells new motor vehicles to new motor vehicle dealers for resale in the state; but such term does not include a person who assembles or specially builds interior equipment on a completed vehicle supplied by another manufacturer, distributor, or supplier.
- ~~36.~~ 38. "Metal tires" includes all tires the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material except that this provision does not apply to pneumatic tires.
- ~~37.~~ 39. "Modular unit" includes every factory fabricated transportable building unit designed to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational, or industrial purposes.
- ~~38.~~ 40. "Motor vehicle" includes every vehicle that is self-propelled, every vehicle 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.
- ~~39.~~ 41. "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry.
- ~~40.~~ 42. "Motorized bicycle" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion or footrests for use by the operator, a power source providing up to a maximum of two brake horsepower having a maximum piston or rotor displacement of 3.05 cubic inches [49.98 milliliters] if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed thirty miles [48.28 kilometers] per hour on a level road surface, and a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged, and the vehicle may not have a width greater than thirty-two inches [81.28 centimeters].
- ~~44.~~ 43. "Nonresident" means any person who is not a resident of this state.
- ~~42.~~ 44. "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state.

- ~~43.~~ 45. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.
- ~~44.~~ 46. "Operator" means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
- ~~45.~~ 47. "Operator's license", "driver's license", or "license to operate a motor vehicle" means any operator's or driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:
- a. Any temporary license or instruction permit;
 - b. The privilege of any person to drive a motor vehicle whether such person holds a valid license; or
 - c. Any nonresident's operating privilege as defined in this section.
- ~~46.~~ 48. "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.
- ~~47.~~ 49. "Park", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
- ~~48.~~ 50. "Passenger motor vehicle" means every motor vehicle designed principally for the transportation of persons and includes vehicles which utilize a truck chassis, but have a seating capacity for four or more passengers.
- ~~49.~~ 51. "Pedestrian" means any person afoot.
- ~~50.~~ 52. "Person" includes every natural person, firm, copartnership, association, corporation, or limited liability company.
- ~~51.~~ 53. "Pneumatic tires" includes all tires inflated with compressed air.
- ~~52.~~ 54. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.
- ~~53.~~ 55. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- ~~54.~~ 56. "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

- ~~55-~~ 57. "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident.
- ~~56-~~ 58. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.
- ~~57-~~ 59. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
- ~~58-~~ 60. "Reconstructed vehicle" means any vehicle, of a type required to be registered, materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.
- ~~59-~~ 61. "Recreational vehicle" means any motorcycle not qualified for registration, all-terrain vehicle, snowmobile, vessel, or personal watercraft.
- ~~60-~~ 62. "Residence district" means territory contiguous to a highway not comprising a business district, when the frontage on such highway for a distance of three hundred feet [91.44 meters] or more is occupied mainly by dwellings, or by dwellings and buildings in use for business.
- ~~64-~~ 63. "Right of way" means the privilege of the immediate use of a roadway.
- ~~62-~~ 64. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.
- ~~63-~~ 65. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately but not to all such roadways collectively.
- ~~64-~~ 66. "Saddle mount" means placing the front wheels of the drawn vehicle upon the bed of the drawing vehicle.
- ~~65-~~ 67. "Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.
- ~~66-~~ 68. "Salvage certificate of title" means a document issued by the department for purposes of proof of ownership of a salvage or destroyed vehicle and not acceptable for motor vehicle registration purposes.

- ~~67.~~ 69. "Schoolbus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to transport primary or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport primary or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.
- ~~68.~~ 70. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck or truck tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck tractor, except that it does not include a "housetrailer" or "mobile home" ~~as defined in subsection 83.~~
- ~~69.~~ 71. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.
- ~~70.~~ 72. "Solid tire" includes every tire made of rubber or other resilient material other than a pneumatic tire.
- ~~74.~~ 73. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway.
- ~~72.~~ 74. "Specially constructed vehicle" means any vehicle which was not constructed originally under the distinct name, make, model, or type by a generally recognized manufacturer of vehicles.
- ~~73.~~ 75. "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.
- ~~74.~~ 76. "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of the Dominion of Canada.
- ~~75.~~ 77. "Stop", when required, means complete cessation from movement.
- ~~76.~~ 78. "Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.
- ~~77.~~ 79. "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
- ~~78.~~ 80. "Superintendent" means the superintendent of the North Dakota state highway patrol, acting directly or through authorized employees of the superintendent.

- ~~79.~~ 81. "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highway and in obedience to either a stop sign or yield sign, when such signs are erected by law.
- ~~80.~~ 82. "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
- ~~84.~~ 83. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.
- ~~82.~~ 84. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- ~~83.~~ 85. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it does not include a "house trailer" or "mobile home", which terms mean a vehicle as defined in this subsection which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.
- ~~84.~~ 86. "Travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require a special highway movement permit when towed by a motorized vehicle.
- ~~85.~~ 87. "Truck" includes every motor vehicle designed, used, or maintained primarily for transportation of property.
- ~~85.1.~~ 88. "Truck camper" means a portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use; consists of a roof, floor, and sides; and is designed to be loaded onto and unloaded from the bed of a pickup truck.
- ~~86.~~ 89. "Truck tractor" includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
- ~~87.~~ 90. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet [30.48 meters] for a distance of a quarter of a mile [402.34 meters] or more.
- ~~88.~~ 91. "Used vehicle" means a motor vehicle which has been sold, bargained, exchanged, given away, or the title to which has been transferred to another, by the person who first acquired it from the manufacturer or importer, dealer, or agent of the manufacturer or importer.
- ~~89.~~ 92. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except

devices moved by human power or used exclusively upon stationary rails or tracks.

¹⁶⁹ **SECTION 3. AMENDMENT.** Subdivision c of subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- c. A violation of section 39-21-41.2, ~~no a fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter~~ of twenty-five dollars.

SECTION 4. AMENDMENT. Section 39-08-18 of the North Dakota Century Code is amended and reenacted as follows:

39-08-18. Open container law - Penalty.

1. A person may not drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car, ~~as defined by subsection 25 of section 39-01-04,~~ if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating this subsection must be assessed a fee of fifty dollars; however, the licensing authority may not record the violation against the person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.
2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment

¹⁶⁹ Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2274, chapter 331.

transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

SECTION 5. AMENDMENT. Section 39-08-19 of the North Dakota Century Code is amended and reenacted as follows:

39-08-19. Penalty for harassment of domestic animals. Any person operating a motorcycle, snowmobile, or other motor vehicle ~~as defined in subsection 38 of section 39-01-01~~ who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor. If injury or death results to the animal due to such action, such person is liable for the value of the animal and exemplary damages as provided in section 36-21-13.

SECTION 6. AMENDMENT. Section 39-21-41.2 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.2. Child restraint devices - Evidence.

1. If a child, under ~~four~~ seven years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. However, a child under the age of seven who is at least fifty-seven inches [1.45 meters] tall and who weighs at least eighty pounds [36.28 kilograms] is not required to use a child restraint system. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. A child weighing more than forty pounds [18.14 kilograms] may be restrained by a lap belt if the vehicle is not equipped with lap and shoulder belts or if all lap and shoulder belts are in use by other occupants. While the motor vehicle is moving, each child of ~~four~~ seven through seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle or if a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

¹⁷⁰ **SECTION 7. AMENDMENT.** Section 51-20-01 of the North Dakota Century Code is amended and reenacted as follows:

¹⁷⁰ Section 51-20-01 was also amended by section 13 of House Bill No. 1342, chapter 344.

51-20-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.
2. "Dealer" means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new recreation vehicles.
3. "Distributor" means any manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; all-terrain vehicles as defined in section 39-29-01; motorcycles as defined in ~~subsection 39 of~~ section 39-01-01; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed forty feet [12.19 meters] in length; and motorboats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.
5. "Repair parts" includes accessories.

¹⁷¹ **SECTION 8. AMENDMENT.** Subsection 9 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

9. Any motor vehicle ~~being registered pursuant to~~ under chapter 39-04 for the first time by a person other than a manufacturer of motor vehicles, as defined in ~~subsection 35 of~~ section 39-01-01, who assembled the motor vehicle for that person's own use.

Approved April 7, 2005

Filed April 12, 2005

¹⁷¹ Section 57-40.3-04 was also amended by section 1 of Senate Bill No. 2123, chapter 583.

CHAPTER 341

SENATE BILL NO. 2154

(Senators Heitkamp, Fischer, Lyson)
(Representatives Amerman, R. Kelsch, Nelson)

COLLECTOR SNOWMOBILE PERMITS

AN ACT to amend and reenact sections 24-02-01.5, 39-24-01, 39-24-04, and 39-24-05 of the North Dakota Century Code, relating to collector snowmobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷² **SECTION 1. AMENDMENT.** Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, ~~subsection 7 of section 39-24-01,~~ subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, ~~subsection 7 of section 39-24-01,~~ subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

SECTION 2. AMENDMENT. Section 39-24-01 of the North Dakota Century Code is amended and reenacted as follows:

¹⁷² Section 24-02-01.5 was also amended by section 1 of Senate Bill No. 2208, chapter 340, and section 6 of Senate Bill No. 2217, chapter 94.

39-24-01. Definitions. For the purposes of this chapter:

1. "Collector snowmobile" means a snowmobile that is twenty-five years old or older, was originally produced as a separate identifiable make by a manufacturer, and is owned and operated solely as a collector's item.
2. "Dealer" means every a person, partnership, corporation, or limited liability company engaged in the business of buying, selling, or exchanging snowmobiles, or who advertises, or holds out to the public as being engaged in the buying, selling, or exchanging of snowmobiles, or who engages in the buying of snowmobiles for resale.
- ~~2.~~ 3. "Operate" means to ride in or on and control the operation of a snowmobile.
- ~~3.~~ 4. "Operator" means every person who operates or is in actual physical control of a snowmobile.
4. 5. "Owner" means a person, other than a lienholder, having the property in or title to a snowmobile and who is entitled to the use or possession thereof of that snowmobile.
- ~~5.~~ "Person" includes an individual, partnership, corporation, limited liability company, association, the state and its departments, agencies, and political subdivisions, and any body of persons, whether incorporated or not.
6. "Register" means the act of assigning a registration number to a snowmobile.
7. "Registrar" means the director of the department of transportation of this state as provided in section 24-02-01.3.
- ~~8.~~ "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.
- ~~9.~~ 8. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.

SECTION 3. AMENDMENT. Section 39-24-04 of the North Dakota Century Code is amended and reenacted as follows:

39-24-04. (Effective through July 31, 2005) Exemption from registration - Exemption from fees.

1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
2. No registration or fees may be required of:
 - a. Snowmobiles owned and used by the United States or another state or its political subdivisions.
 - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.

- c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
- d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
- e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.
- f. Collector snowmobiles. The director may issue a special permit to a person to operate in a parade; in organized group outings, including races, rallies, or other promotional events; and for up to ten days each year for personal transportation. The permit must be in the form of a card to be carried on or by the operator of the collector snowmobile. The permit is valid for the duration of ownership of the snowmobile by the recipient of the permit. The director may impose a reasonable restriction of a permittee and may revoke, amend, suspend, or modify a permit for cause.

(Effective after July 31, 2005) Exemption from registration - Exemption from fees.

- 1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
- 2. No registration or fees may be required of:
 - a. Snowmobiles owned and used by the United States or another state or its political subdivisions.
 - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.
 - c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
 - e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.
 - f. Collector snowmobiles. The director may issue a special permit to a person to operate in a parade; organized group outings, including races, rallies, or other promotional events; and for up to ten days each year for personal transportation. The director may impose a reasonable restriction of a permittee and may revoke, amend, suspend, or modify a permit for cause.
- 3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2, the owner is required to display on the snowmobile a decal received upon payment of a fifteen dollar per year trail access fee.

Fees collected under this subsection must be deposited in the state snowmobile fund.

SECTION 4. AMENDMENT. Section 39-24-05 of the North Dakota Century Code is amended and reenacted as follows:

39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registration fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on thirty gallons [113.56 liters] of motor vehicle fuel multiplied by the number of collector snowmobiles and snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities and programs.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 342

SENATE BILL NO. 2205

(Senators J. Lee, Espegard)
(Representatives Iverson, Kingsbury, Nelson)

SNOWMOBILE REGISTRATION AND OPERATION

AN ACT to amend and reenact subsection 2 of section 39-24-03, subsection 6 of section 39-24-09, and section 39-24-09.1 of the North Dakota Century Code, relating to snowmobile registration and snowmobile operation by an individual who is at least twelve years of age.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-24-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of the application and the appropriate fee, the department shall register a snowmobile and assign a registration number and a certificate of registration. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material and must be securely affixed on each side of the ~~forward half of the~~ snowmobile in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner. The fee for registration of each snowmobile must be five dollars for any portion of the registration period and the registration period is for two years beginning October first of each odd-numbered year. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed five dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of thirty-five dollars.

SECTION 2. AMENDMENT. Subsection 6 of section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

6. It is unlawful for any person to operate a snowmobile pursuant to chapter 39-24 without having in possession a valid driver's license ~~or permit~~, except as provided by section 39-24-09.1.

SECTION 3. AMENDMENT. Section 39-24-09.1 of the North Dakota Century Code is amended and reenacted as follows:

39-24-09.1. Operation by persons under age sixteen individuals at least twelve years of age. ~~Except as otherwise provided in this section, it is unlawful for any person~~ An individual ~~twelve years of age and over who has not reached sixteen years of age and who is not~~ may not operate a snowmobile unless the individual is in possession of a valid driver's license or permit to operate a snowmobile, except upon the lands of the person's parent or guardian operates the snowmobile on private land, or unless and until the person individual has completed a snowmobile safety training course as prescribed by the director of the parks and recreation department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the director of the department of transportation. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce this chapter is presumptive evidence that the ~~person~~ individual is not the holder of the certificate. Fees collected from each ~~person~~ individual receiving certification must be deposited into the snowmobile trail tax fund for purposes of establishing snowmobile safety programs.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 343**SENATE BILL NO. 2339**

(Senators Trenbeath, Urlacher)
(Representatives Price, Weisz)

MOTORCYCLE SAFETY EDUCATION FEES

AN ACT to amend and reenact section 39-28-01 of the North Dakota Century Code, relating to motorcycle safety education fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-28-01 of the North Dakota Century Code is amended and reenacted as follows:

39-28-01. Additional fees for motorized bicycle and motorcycle registration. In addition to the fees required by section 39-04-19 for motorized bicycle and motorcycle registration, a motorcycle safety education fee of ~~five~~ ten dollars is required at the time of registration of each motorized bicycle and motorcycle.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 344

HOUSE BILL NO. 1342

(Representatives Weisz, Drovdal, Ruby)
(Senator Trenbeath)

ALL-TERRAIN VEHICLES

AN ACT to amend and reenact subsection 59 of section 39-01-01 and sections 39-29-01, 39-29-01.1, 39-29-02, 39-29-03, 39-29-04, 39-29-05, 39-29-06, 39-29-07, 39-29-08, 39-29-09, 39-29-12, 51-20-01, and 57-40.3-01 of the North Dakota Century Code, relating to all-terrain vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷³ **SECTION 1. AMENDMENT.** Subsection 59 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

59. "Recreational vehicle" means any motorcycle not qualified for registration, ~~all-terrain~~ off-highway vehicle, snowmobile, vessel, or personal watercraft.

¹⁷⁴ **SECTION 2. AMENDMENT.** Section 39-29-01 of the North Dakota Century Code is amended and reenacted as follows:

39-29-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. ~~"All-terrain vehicle" means any motorized off-highway vehicle fifty inches [4270.00 millimeters] or less in width, having a dry weight of one thousand pounds [453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.~~
2. "Dealer" means any person engaged in the business of buying, selling, or exchanging ~~all-terrain~~ off-highway vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of ~~all-terrain~~ off-highway vehicles, or who engages in the buying of ~~all-terrain~~ off-highway vehicles for resale.
2. "Off-highway vehicle" means any wheeled motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain. An

¹⁷³ Section 39-01-01 was also amended by section 25 of House Bill No. 1016, chapter 16, and section 2 of Senate Bill No. 2208, chapter 340.

¹⁷⁴ Section 39-29-01 was also amended by section 1 of House Bill No. 1412, chapter 345.

off-highway vehicle must be classified into one of the following categories:

- a. Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.
 - b. Class II off-highway vehicle is less than fifty inches [1270.00 millimeters] in width, travels on three or more low-pressure tires, has a saddle designed to be straddled by the operator, and has handlebars for steering control.
 - c. Class III off-highway vehicle weighs less than eight thousand pounds, travels on four or more tires, has a seat and a wheel for steering control, and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, unless registered by the department under chapter 39-04.
3. "Operate" means to ride in or on and control the operation of an all-terrain off-highway vehicle.
 4. "Operator" means ~~a person~~ an individual who operates or is in actual physical control of an all-terrain off-highway vehicle.
 5. "Owner" means a person, other than a lienholder, having the property in or title to an all-terrain off-highway vehicle and entitled to its use or possession.
 6. "Register" means the act of assigning a registration number to an all-terrain off-highway vehicle.

SECTION 3. AMENDMENT. Section 39-29-01.1 of the North Dakota Century Code is amended and reenacted as follows:

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of ~~an all-terrain~~ a new or used off-highway vehicle, ~~each~~ a dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of all-terrain off-highway vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the all-terrain off-highway vehicle fund established under ~~subsection 2 of~~ section 39-29-05. The fees may be used only by the parks and recreation department and only for all-terrain off-highway vehicle safety education and promotion.

SECTION 4. AMENDMENT. Section 39-29-02 of the North Dakota Century Code is amended and reenacted as follows:

39-29-02. All-terrain Off-highway vehicle registration. Except as provided in this chapter, ~~a person~~ an individual may not operate an all-terrain off-highway vehicle unless it has been registered ~~in accordance with~~ under this chapter.

SECTION 5. AMENDMENT. Section 39-29-03 of the North Dakota Century Code is amended and reenacted as follows:

39-29-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the department of transportation in the form the department prescribes and furnishes. The registration must state the name and address of every owner of the all-terrain off-highway vehicle and be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
2. On receipt of an application and the appropriate fee, the department shall register the all-terrain off-highway vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
3. The fee for registration of each all-terrain off-highway vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each all-terrain off-highway vehicle registered under this chapter, there is an all-terrain off-highway vehicle trail tax of five dollars.
4. The owner of an all-terrain off-highway vehicle shall renew the registration in the manner the department prescribes and pay the registration fees and applicable tax provided in subsection 3.
5. On application for registration as prescribed in subsection 2, and on payment of the amounts prescribed in subsection 3, an all-terrain off-highway vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's registration numbers may be used only on all-terrain off-highway vehicles owned by the dealership.

SECTION 6. AMENDMENT. Section 39-29-04 of the North Dakota Century Code is amended and reenacted as follows:

39-29-04. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. All-terrain Off-highway vehicles owned and used by the United States or another state or its political subdivisions.
 - b. All-terrain Off-highway vehicles registered in a foreign country and temporarily used in this state.
 - c. All-terrain Off-highway vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. All-terrain Off-highway vehicles used exclusively ~~for work on private agricultural lands or on industrial jobsites on private land.~~
 - e. All-terrain Off-highway vehicles used exclusively in organized track racing events.

2. ~~All-terrain~~ Off-highway vehicles owned by the state or any of its political subdivisions are exempt from the registration fees in section 39-29-03.

SECTION 7. AMENDMENT. Section 39-29-05 of the North Dakota Century Code is amended and reenacted as follows:

39-29-05. Disposition of registration fees and trail tax.

1. Fees from registration of ~~all-terrain~~ off-highway vehicles must be deposited with the state treasurer and credited to the motor vehicle registration fund.
2. The ~~all-terrain~~ off-highway vehicle trail tax must be deposited in a state off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing ~~all-terrain~~ off-highway vehicle facilities, ~~all-terrain~~ off-highway vehicle use areas, and ~~all-terrain~~ off-highway vehicle safety and education programs, and enforcement of this chapter.

SECTION 8. AMENDMENT. Section 39-29-06 of the North Dakota Century Code is amended and reenacted as follows:

39-29-06. Transfer or termination of ~~all-terrain~~ off-highway vehicle ownership - Change of address of owner. Within fifteen days after the transfer of any ownership interest in an ~~all-terrain~~ off-highway vehicle, other than a security interest, or the destruction or abandonment of any ~~all-terrain~~ off-highway vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the new owner to the director in the form the director requires.

SECTION 9. AMENDMENT. Section 39-29-07 of the North Dakota Century Code is amended and reenacted as follows:

39-29-07. Licensing by political subdivisions. Political subdivisions of this state may not require licensing or registration of ~~all-terrain~~ off-highway vehicles.

SECTION 10. AMENDMENT. Section 39-29-08 of the North Dakota Century Code is amended and reenacted as follows:

39-29-08. Rules. ~~Rules for the regulation and use of all-terrain vehicles must be adopted as follows:~~

1. The department shall adopt rules for the registration of ~~all-terrain~~ off-highway vehicles and display of registration numbers.
2. The director ~~may~~, in the interest of public health, welfare, and safety, may regulate, by rule, the operation of ~~all-terrain~~ off-highway vehicles on state highways. The director's authority to prohibit the use of ~~all-terrain~~ off-highway vehicles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the director may, on a case-by-case basis, permit organized and bona fide ~~all-terrain~~ off-highway vehicle races on the ditch bottoms, backslopes, and the top of the backslopes of the state highway rights of way. The planning, organization, route

selection, and safety precautions of any ~~such~~ race are the sole responsibility of the person obtaining the permit. The director, the department, and the department's employees do not incur ~~no~~ any liability for permitting ~~such~~ races.

3. The director of the parks and recreation department shall adopt rules to regulate use of ~~all-terrain~~ off-highway vehicles in state parks and other state-owned land under the supervision of the director of the parks and recreation department.
4. The governing bodies of political subdivisions may adopt rules to regulate use of ~~all-terrain~~ off-highway vehicles in areas under their jurisdiction. The governing body of a city may, by ordinance, regulate, restrict, and prohibit the use of ~~all-terrain~~ off-highway vehicles operated in the city limits in areas under the exclusive jurisdiction of the city.

¹⁷⁵ **SECTION 11. AMENDMENT.** Section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

39-29-09. Operation of ~~all-terrain~~ off-highway vehicles.

1. A ~~person~~ An individual may not operate an ~~all-terrain~~ off-highway vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, a ~~person~~ an individual may not operate an ~~all-terrain~~ off-highway vehicle within the right of way of any controlled-access highway. An individual may operate a registered off-highway vehicle on a gravel, dirt, or loose surface roadway. An individual may operate a registered off-highway vehicle on a paved county or township roadway if the off-highway vehicle is towing an implement of husbandry and does not exceed the speed of twenty-five miles [40.23 kilometers] per hour. An individual may operate a registered off-highway vehicle on a paved county or township roadway designated and posted at a speed not exceeding forty-five miles [72.42 kilometers] per hour.
2. The operator of an ~~all-terrain~~ off-highway vehicle may make a direct crossing of a street or highway only if:
 - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The ~~all-terrain~~ off-highway vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway.

¹⁷⁵ Section 39-29-09 was also amended by section 1 of House Bill No. 1327, chapter 346, and section 2 of House Bill No. 1412, chapter 345.

3. A ~~person~~ individual Unless an individual is operating a class 1 off-highway vehicle, an individual may not operate an ~~all-terrain~~ off-highway vehicle unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director of the department of transportation, except when under the direct supervision of an ~~all-terrain~~ off-highway vehicle instructor teaching a certified ~~all-terrain~~ off-highway vehicle safety training course, the requirement for a headlamp and taillamp may be waived.
4. The emergency conditions under which an ~~all-terrain~~ off-highway vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile impractical under the conditions and at the time and location in question.
5. A ~~person~~ individual An individual may not operate an ~~all-terrain~~ off-highway vehicle in the following ways, which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to ~~such another~~ another person or the property of another person.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. Without a lighted headlamp and taillamp except when used by an ~~all-terrain~~ off-highway vehicle instructor during a certified ~~all-terrain~~ off-highway vehicle safety training course.
 - e. In any tree nursery or planting in a manner ~~which~~ that damages growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the ~~all-terrain~~ off-highway vehicle's exhaust system.
 - g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of ~~such~~ these signs; at or on all gates through the fence or enclosure.
6. Except as provided in section 39-29-10, a ~~person~~ individual may not operate an ~~all-terrain~~ off-highway vehicle without having in possession a valid driver's license or permit.
7. When an ~~all-terrain~~ off-highway vehicle is operated within the right of way of any road, street, or highway, during times or conditions that

warrant the use of lights by other motor vehicles, the ~~all-terrain~~ off-highway vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the ~~all-terrain~~ off-highway vehicle.

8. A ~~person~~ An individual may not operate an ~~all-terrain~~ off-highway vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the ~~all-terrain~~ off-highway vehicle by a hinged swivel and secure hitch.
9. ~~Helmet required. No person~~ An individual under the age of eighteen years may not operate, ride, or otherwise be propelled on an ~~all-terrain~~ off-highway vehicle unless the person wears a safety helmet meeting United States department of transportation standards.
10. ~~Passenger restrictions. No~~ An operator of an ~~all-terrain~~ off-highway vehicle may not carry a passenger while operating the vehicle unless the off-highway vehicle is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.
11. Unless otherwise provided by law, an off-highway vehicle may be operated on an aggregate road surface only when designated as part of an active off-highway vehicle trail by the managing entity.

SECTION 12. AMENDMENT. Section 39-29-12 of the North Dakota Century Code is amended and reenacted as follows:

39-29-12. Penalties. Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of fifty dollars must be assessed. If the ~~person~~ individual provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

¹⁷⁶ **SECTION 13. AMENDMENT.** Section 51-20-01 of the North Dakota Century Code is amended and reenacted as follows:

51-20-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service,

¹⁷⁶ Section 51-20-01 was also amended by section 7 of Senate Bill No. 2208, chapter 340.

and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.

2. "Dealer" means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new recreation vehicles.
3. "Distributor" means any manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; ~~all-terrain~~ off-highway vehicles as defined in section 39-29-01; motorcycles as defined in subsection 39 of section 39-01-01; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed forty feet [12.19 meters] in length; and motorboats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.
5. "Repair parts" includes accessories.

¹⁷⁷ **SECTION 14. AMENDMENT.** Section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-01. Definitions. As used in this chapter, except when the context clearly indicates a different meaning:

1. ~~"All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of one thousand pounds [453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.~~
2. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers per hour] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers per hour] and may not exceed one thousand five hundred pounds [680.39 kilograms] in unloaded weight.
3. 2. "Motor vehicle" includes every vehicle that is self-propelled and every vehicle 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~~ off-highway vehicle, snowmobile, low-speed vehicle, and travel trailer

¹⁷⁷ Section 57-40.3-01 was also amended by section 4 of House Bill No. 1055, chapter 569, and section 4 of Senate Bill No. 2101, chapter 324.

for which a certificate of title is required to be obtained under chapter 39-05, but not including house trailers or mobile homes.

3. "Off-highway vehicle" means off-highway vehicle as defined in section 39-29-01.
4. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.
6. "Purchaser" means any person owning or in possession of a motor vehicle who makes application to the director of the department of transportation for registration plates or a certificate of title for such vehicle.

7. "Registrar" means the director of the department of transportation of this state as provided by section 24-02-01.3, and who shall act as the agent of the state tax commissioner in administering this chapter.
8. "Sale", "sells", "selling", "purchase", "purchased", or "acquired" includes any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration.
9. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
10. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.
11. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
12. "Travel trailer" means a mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.
13. "Use" means the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
14. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 345

HOUSE BILL NO. 1412

(Representatives R. Kelsch, Delmore, Nelson, Porter)
(Senators Lyson, Trenbeath)

ALL-TERRAIN VEHICLE PASSENGERS

AN ACT to amend and reenact subsection 1 of section 39-29-01 and subsection 10 of section 39-29-09 of the North Dakota Century Code, relating to passengers on all-terrain vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁸ **SECTION 1. AMENDMENT.** Subsection 1 of section 39-29-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270.00 millimeters] or less in width, having a dry weight of one thousand pounds [453.59 kilograms] or less, traveling on three or more low-pressure tires, ~~designed for operator use only with no passengers,~~ having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

¹⁷⁹ **SECTION 2. AMENDMENT.** Subsection 10 of section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

10. ~~Passenger restrictions. No~~ An operator of an all-terrain vehicle may not carry a passenger while operating the vehicle unless the vehicle is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.

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

Approved March 7, 2005

Filed March 8, 2005

¹⁷⁸ Section 39-29-01 was also amended by section 2 of House Bill No. 1342, chapter 344.

¹⁷⁹ Section 39-29-09 was also amended by section 1 of House Bill No. 1327, chapter 346, and section 11 of House Bill No. 1342, chapter 344.

CHAPTER 346

HOUSE BILL NO. 1327

(Representatives Gulleason, Amerman, Nelson)
(Senators Heitkamp, G. Lee)

ALL-TERRAIN VEHICLE OPERATION

AN ACT to create and enact a new subsection to section 39-29-09 of the North Dakota Century Code, relating to the operation of all-terrain vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁰ **SECTION 1.** A new subsection to section 39-29-09 of the North Dakota Century Code is created and enacted as follows:

A person who is performing pest control or survey work for a political subdivision may operate an all-terrain vehicle on the bottom, back slope, inside slope, and shoulder of a highway other than a controlled-access highway.

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

Approved March 22, 2005
Filed March 22, 2005

¹⁸⁰ Section 39-29-09 was also amended by section 11 of House Bill No. 1342, chapter 344, and section 2 of House Bill No. 1412, chapter 345.

MUNICIPAL GOVERNMENT

CHAPTER 347

HOUSE BILL NO. 1482

(Representatives Kaldor, Carlisle, Devlin, Glassheim)
(Senators Seymour, Wardner)

NEPOTISM BY CITY OFFICIALS

AN ACT to create and enact a new section to chapter 40-13 of the North Dakota Century Code, relating to nepotism by city officials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-13 of the North Dakota Century Code is created and enacted as follows:

Nepotism by city officials restricted. The head of an executive or administrative department of a city may not appoint that individual's spouse, son, daughter, brother, or sister to any position under the control or direction of that individual, unless the appointment has previously been approved by the governing body of the city.

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 348**SENATE BILL NO. 2411**

(Senator Nething)

(Approved by the Delayed Bills Committee)

LIBRARY TAX LEVIES

AN ACT to amend and reenact subsection 5 of section 40-38-11 of the North Dakota Century Code, relating to property tax levies by joint public library services by cities and counties; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 40-38-11 of the North Dakota Century Code is amended and reenacted as follows:

5. A joint library fund shall be established for the public library services covered by the agreement. Each city or county represented in the agreement shall provide its pro rata share of funds for the services, as specified in the agreement, from the funds received under section 40-38-02. Taxes within the service area covered by the written agreement under subsection 1 which is outside city limits may be levied within the limitations and according to the procedures provided by law for a county library fund levy and taxes within the service area that is within city limits may be levied within the limitations and according to the procedures provided by law for a city library fund levy.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 349

HOUSE BILL NO. 1221

(Representatives Herbel, Porter, Wieland)

CITY BUDGET DEADLINE

AN ACT to amend and reenact sections 40-40-06 and 40-40-09 of the North Dakota Century Code, relating to the final city budget deadline.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-40-06 of the North Dakota Century Code is amended and reenacted as follows:

40-40-06. Notice of preliminary budget statement - Contents - How given. After the governing body has prepared the preliminary budget statement, the auditor of the municipality shall give notice that:

1. The preliminary budget is on file in the office of the auditor and may be examined by anyone upon request.
2. The governing body shall meet no later than October ~~first~~ seventh at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy.
3. The governing body shall hold a public session at the time and place designated in the notice of hearing at which any taxpayer may appear and discuss with the body any item of proposed expenditures or may object to any item or amount.

The notice must contain a statement of the total proposed expenditures for each fund in the preliminary budget, but need not contain any detailed statement of the proposed expenditures. The notice must be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice must be published not less than six days prior to the meeting in the official city newspaper as provided by section 40-01-09.

SECTION 2. AMENDMENT. Section 40-40-09 of the North Dakota Century Code is amended and reenacted as follows:

40-40-09. Determination of amount to be levied - Adoption of levy - Limitations. After completing the final budget on or before October ~~first~~ seventh, the governing body shall proceed to make the annual tax levy in an amount sufficient to meet the expenses for the ensuing year as determined at the budget meeting. In determining the amount required to be levied, the governing body first shall ascertain its net current resources by adding the estimated revenue for the ensuing year other than property taxes, any transfers in, and the estimated fund balance at the end of the current year. Then the governing body shall ascertain its appropriation and reserve by adding the final appropriation for the ensuing year, any transfers out, and the cash reserve. The net current resources must be deducted from the appropriation and reserve and the balance shall be considered the amount that is required to be raised by taxation during the ensuing year. The determination of the

amount of the levy that can be collected within the ensuing year must be made by the governing body based upon the past experience of the district. The levy as finally adopted must be approved by a majority vote of the members of the governing body and noted in the proceedings of the governing body. The amount levied is subject to the limitations as prescribed by the laws of this state, and is subject to the further limitation that the amount may not exceed the levy requested by the municipality. The levy adopted must appropriate in specific amounts the money necessary to meet the expenses and liabilities of the municipality.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 350

SENATE BILL NO. 2324

(Senators Kringstad, Hacker)
(Representatives N. Johnson, Sitte)

PARK DISTRICT COMBINATION TAX LEVY

AN ACT to amend and reenact subsection 3 of section 40-49.1-03 of the North Dakota Century Code, relating to combination of boards of park commissioners; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 40-49.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A plan for combining boards of park commissioners may not repeal or diminish any general law of the state directing or requiring a board of park commissioners to carry out any function or provide any service. A combined board of park commissioners, resulting from a combination of boards of city and county park commissioners, may not levy any tax or exercise any power that was not otherwise conferred within the territorial jurisdiction of the county upon the previous board of county park commissioners, and taxes that may be authorized by law for a city park district may be levied only in areas within the jurisdiction of the combined board which are designated as cities taxes within the portion of the combined district outside city limits within the limitations provided by law for a board of county park commissioners and may levy taxes within the portion of the combined park district that is within city limits within the limitations provided by law for city park districts. The plan must be approved by the electorate in each affected city and county.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2005.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 351

SENATE BILL NO. 2183

(Senators Holmberg, Trenbeath)

PLAT CERTIFICATION

AN ACT to amend and reenact section 40-50.1-03 of the North Dakota Century Code, relating to certification of townsite or subdivision plats.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-50.1-03 of the North Dakota Century Code is amended and reenacted as follows:

40-50.1-03. Instruments of dedication - Certifying and recording plat.

The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ball point. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat; ~~if right-of-way dedication is required,~~ together with a copy of a title insurance policy or an attorney's opinion of title, running to the benefit of the governing body affected by the plat, stating the name of the owner of record.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 352

HOUSE BILL NO. 1454

(Representative Keiser)

CITY MOTOR VEHICLE RENTAL TAX

AN ACT to create and enact section 40-57.3-01.2 of the North Dakota Century Code, relating to the imposition of a city motor vehicle rental tax; and to amend and reenact section 40-57.3-02 of the North Dakota Century Code, relating to the city visitors' promotion fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-57.3-01.2 of the North Dakota Century Code is created and enacted as follows:

40-57.3-01.2. City motor vehicle rental tax - Imposition - Amount - Disposition - Definitions. The governing body of any city may impose, by ordinance, a city tax at a rate not to exceed one percent upon the gross receipts of a retailer on the rental of any motor vehicle for fewer than thirty days if that motor vehicle is either delivered to a renter at an airport or delivered to a renter who was picked up by the retailer at an airport. The tax imposed under this section is in addition to state sales taxes on the rental of motor vehicles for fewer than thirty days. Any city that imposes the tax under this section shall deposit all proceeds in the city visitors' promotion fund. For purposes of this section, "motor vehicle" means a motorized passenger vehicle designed to be operated on highways and "retailer" means a company for which the primary business is the renting of motor vehicles for periods of fewer than thirty days.

SECTION 2. AMENDMENT. Section 40-57.3-02 of 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, or 40-57.3-01.2 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 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.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 353

HOUSE BILL NO. 1525

(Representatives Clark, Dietrich, S. Kelsh)

(Senators Fischer, Flakoll, Grindberg)

(Approved by the Delayed Bills Committee)

PEDESTRIAN MALL IMPROVEMENTS

AN ACT to amend and reenact sections 40-62-01 and 40-62-03 and subsection 1 of section 40-62-05 of the North Dakota Century Code, relating to city pedestrian mall improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-62-01 of the North Dakota Century Code is amended and reenacted as follows:

40-62-01. Authority for pedestrian mall and skyway improvements - Definitions.

1. The governing body of any city may by resolutions create a special improvement district, order and approve plans and specifications, determine the necessity, advertise and enter ~~into~~ contracts, issue special improvement warrants and bonds, and levy special assessments for the improvement of one or more streets within its central business district to be regulated and maintained as a mall for primarily pedestrian use, or for the construction of skyways within its central business district, in the manner and upon the terms and conditions set forth in chapters 40-22 to 40-27, except as otherwise provided in this chapter.
2. For the purposes of this chapter, "~~skyway~~":
 - a. "Pedestrian mall" means a street within a city designated by the governing body and improved to encourage a high concentration of pedestrian use.
 - b. "Skyway" means an overhead walkway, whether open or enclosed, allowing pedestrian traffic between buildings separated by a street, and includes all corridors, passageways, methods of ingress and egress, and other appurtenances necessary for an integrated and connected system.

SECTION 2. AMENDMENT. Section 40-62-03 of the North Dakota Century Code is amended and reenacted as follows:

40-62-03. Plans and specifications. The plans and specifications ~~shall~~ must provide for improvement of the designated streets or construction of skyways in a manner designed for ~~use primarily for~~ the free movement, safety, convenience, and enjoyment of pedestrians, whether or not part of the mall is made available for emergency or other permitted vehicles. A mall improvement may provide for and include space for seating, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting,

ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all ~~such~~ other fixtures, equipment, facilities, and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or ~~such~~ other materials or combinations of materials as the governing body may approve. The governing body may ~~in its discretion narrow~~ alter any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, and may cause any roadway to curve and meander within the limits of the street, if ~~deemed~~ determined desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the centerline of the street. A skyway may be ~~open or enclosed~~, heated or unheated; and may include any fixtures, equipment, facilities, and appurtenances the governing body determines will enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city.

SECTION 3. AMENDMENT. Subsection 1 of section 40-62-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Vehicles ~~shall~~ may be permitted to ~~cross the mall at all street intersections except those of two streets each forming part of the mall~~ within the pedestrian mall in designated driving and parking lanes as determined by the governing body.

Approved April 5, 2005

Filed April 6, 2005

UNIFORM COMMERCIAL CODE

CHAPTER 354

HOUSE BILL NO. 1151

(Judiciary Committee)

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

UCC ARTICLE 7 - DOCUMENTS OF TITLE

AN ACT to create and enact a new chapter 41-07 and subsection 7 of section 41-08-03 of the North Dakota Century Code, relating to Uniform Commercial Code Article 7 - Documents of Title; to amend and reenact subsections 5, 6, 10, 14, 15, 20, 25, 26, 27, 38, and 45 of section 41-01-11, subsection 3 of section 41-02-03, subsection 2 of section 41-02-04, subsection 3 of section 41-02-27, subsection 2 of section 41-02-40, subsection 3 of section 41-02-46, subsections 4 and 5 of section 41-02-51, section 41-02-53, subsection 2 of section 41-02-54, subsection 2 of section 41-02-57, subsection 2 of section 41-02-68, section 41-02-84, subdivisions a and o of subsection 1 of section 41-02.1-03, subsection 2 of section 41-02.1-62, subdivision c of subsection 2 of section 41-02.1-74, subsection 3 of section 41-04-04, subsection 3 of section 41-04-22, subsection 2 of section 41-09-02, paragraph 4 of subdivision c of subsection 2 of section 41-09-13, subsection 3 of section 41-09-17, subsection 2 of section 41-09-18, subsection 3 of section 41-09-21, subdivisions e and h of subsection 2 of section 41-09-30, subsection 5 of section 41-09-32, subsection 1 of section 41-09-33, subsections 1 and 2 of section 41-09-34, subsections 2 and 4 of section 41-09-37, subsection 2 of section 41-09-58, and subsection 2 of section 41-09-98 of the North Dakota Century Code, relating to the Uniform Commercial Code; to repeal chapter 41-07 of the North Dakota Century Code, relating to Uniform Commercial Code Article 7 - Documents of Title; and to provide for an application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, 10, 14, 15, 20, 25, 26, 27, 38, and 45 of section 41-01-11 of the North Dakota Century Code are amended and reenacted as follows:

5. "Bearer" means the a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.
6. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods; and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. The term does not include a warehouse receipt.

10. "Conspicuous". A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term or clause is "conspicuous" or not is for a decision by the court. Conspicuous terms include the following:
- a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
14. "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.
15. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the document record and the goods it the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.
20. "Holder" with respect to an instrument, certificated security, or document of title means the person in possession if, in the case of an instrument, it is payable to bearer or to the order of the person in possession; in the case of a security, the person in possession is the registered owner, the security has been endorsed to the person in possession by the registered owner, or the security is in bearer form; or, in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession means:

- a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
 - b. The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
 - c. The person in control of a negotiable electronic document of title.
25. A Subject to subsection 27, a person has "notice" of a fact ~~when if:~~
- a. The person has actual knowledge of it;
 - b. The person has received a notice or notification of it; or
 - c. From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.
- A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.
26. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not ~~such the other person~~ actually comes to know of it. A Subject to subsection 27, a person "receives" a notice or notification when:
- a. It comes to ~~the~~ that person's attention; or
 - b. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at ~~any other place~~ another location held out by ~~the~~ that person as the place for receipt of such communications.
27. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to the ~~person's individual's~~ attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or ~~unless~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
38. "Send" in connection with ~~any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address~~

~~specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending~~ a writing, record, or notice means:

- a. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
 - b. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
45. "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

SECTION 2. AMENDMENT. Subsection 3 of section 41-02-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
 - a. "Check". Section 41-03-04.
 - b. "Consignee". Section 41-07-02.
 - c. "Consignor". Section 41-07-02.
 - d. "Consumer goods". Section 41-09-02.
 - e. "Dishonor". Section 41-03-59.
 - f. "Draft". Section 41-03-04.

SECTION 3. AMENDMENT. Subsection 2 of section 41-02-04 of the North Dakota Century Code is amended and reenacted as follows:

2. "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 41-02-86).

SECTION 4. AMENDMENT. Subsection 3 of section 41-02-27 of the North Dakota Century Code is amended and reenacted as follows:

3. If delivery is authorized and made by way of documents of title otherwise than by subsection 2, then payment is due regardless of where the goods are to be received (a) at the time and place at which

the buyer is to receive delivery of the tangible documents regardless of where the goods are to be received or (b) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence.

SECTION 5. AMENDMENT. Subsection 2 of section 41-02-40 of the North Dakota Century Code is amended and reenacted as follows:

2. If in a case within subsection 1 a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:
 - a. Due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection 1 of section 41-02-56); and
 - b. Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

SECTION 6. AMENDMENT. Subsection 3 of section 41-02-46 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless otherwise explicitly agreed, if delivery is to be made without moving the goods:
 - a. If the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents- and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
 - b. If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

SECTION 7. AMENDMENT. Subsections 4 and 5 of section 41-02-51 of the North Dakota Century Code are amended and reenacted as follows:

4. If goods are in the possession of a bailee and are to be delivered without being moved:
 - a. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
 - b. Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record~~ directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided under chapter 41-09 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had

a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents:
 - a. The seller must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection 2 of section 41-02-40); and
 - b. Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

SECTION 8. AMENDMENT. Section 41-02-53 of the North Dakota Century Code is amended and reenacted as follows:

41-02-53. (2-505) Seller's shipment under reservation.

1. If the seller has identified goods to the contract by or before shipment:
 - a. The seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
 - b. A nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection 2 of section 41-02-55) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.
2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within section 41-02-52 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

SECTION 9. AMENDMENT. Subsection 2 of section 41-02-54 of the North Dakota Century Code is amended and reenacted as follows:

2. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face~~.

SECTION 10. AMENDMENT. Subsection 2 of section 41-02-57 of the North Dakota Century Code is amended and reenacted as follows:

2. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

- a. On the buyer's receipt of possession or control of a negotiable document of title covering the goods;
- b. On acknowledgment by the bailee of the buyer's right to possession of the goods; or
- c. After the buyer's receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subdivision b of subsection 4 of section 41-02-51.

SECTION 11. AMENDMENT. Subsection 2 of section 41-02-68 of the North Dakota Century Code is amended and reenacted as follows:

2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

SECTION 12. AMENDMENT. Section 41-02-84 of the North Dakota Century Code is amended and reenacted as follows:

41-02-84. (2-705) Seller's stoppage of delivery in transit or otherwise.

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (section 41-02-81) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
2. As against such buyer the seller may stop delivery until:
 - a. Receipt of the goods by the buyer;
 - b. Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer;
 - c. Such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~ a warehouse; or
 - d. Negotiation to the buyer of any negotiable document of title covering the goods.
3.
 - a. To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - b. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - c. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

- d. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 13. AMENDMENT. Subdivisions a and o of subsection 1 of section 41-02.1-03 of the North Dakota Century Code are amended and reenacted as follows:

- a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- o. "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

SECTION 14. AMENDMENT. Subsection 2 of section 41-02.1-62 of the North Dakota Century Code is amended and reenacted as follows:

2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

SECTION 15. AMENDMENT. Subdivision c of subsection 2 of section 41-02.1-74 of the North Dakota Century Code is amended and reenacted as follows:

- c. Such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse.

SECTION 16. AMENDMENT. Subsection 3 of section 41-04-04 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
 - a. "Acceptance". Section 41-03-46.
 - b. "Alteration". Section 41-03-44.
 - c. "Cashier's check". Section 41-03-04.
 - d. "Certificate of deposit". Section 41-03-04.

- e. "Certified check". Section 41-03-45.
- f. "Check". Section 41-03-04.
- g. "Good faith". Section 41-03-03.
- h. "Holder in due course". Section 41-03-28.
- i. "Instrument". Section 41-03-04.
- j. "Notice of dishonor". Section 41-03-60.
- k. "Order". Section 41-03-03.
- l. "Ordinary care". Section 41-03-03.
- m. "Person entitled to enforce". Section 41-03-27.
- n. "Presentment". Section 41-03-58.
- o. "Promise". Section 41-03-03.
- p. "Prove". Section 41-03-03.
- q. "Teller's check". Section 41-03-04.
- r. "Unauthorized signature". Section 41-03-40.

SECTION 17. AMENDMENT. Subsection 3 of section 41-04-22 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 41-09, except that:
 - a. No security agreement is necessary to make the security interest enforceable (paragraph 1 of subdivision c of subsection 2 of section 41-09-13).
 - b. No filing is required to perfect the security interest.
 - c. The security interest has priority over conflicting perfected security interest in the item, accompanying documents, or proceeds.

SECTION 18. Chapter 41-07 of the North Dakota Century Code is created and enacted as follows:

41-07-01. (7-101) Short title. This article may be cited as Uniform Commercial Code - Documents of Title.

41-07-02. (7-102) Definitions and index of definitions.

1. In this chapter, unless the context otherwise requires:

- a. "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- b. "Carrier" means a person that issues a bill of lading.
- c. "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.
- d. "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.
- e. "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
- f. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- g. "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
- h. "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.
- i. "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
- j. "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.
- k. "Sign" means, with present intent to authenticate or adopt a record:
 - (1) To execute or adopt a tangible symbol; or
 - (2) To attach to or logically associate with the record an electronic sound, symbol, or process.
- l. "Shipper" means a person that enters into a contract of transportation with a carrier.
- m. "Warehouse" means a person engaged in the business of storing goods for hire.

2. Definitions in other sections applying to this chapter and the sections in which they appear are:
 - a. "Contract for sale", section 41-02-06.
 - b. "Lessee in ordinary course", section 41-02.1-03.
 - c. "Receipt" of goods, section 41-02-03.
3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-07-03. (7-103) Relation of article to treaty or statute.

1. This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.
2. This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.
3. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. section 7001, et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. section 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. section 7003(b)].
4. To the extent there is a conflict between chapter 9-16 and this chapter, this chapter governs.

41-07-04. (7-104) Negotiable and nonnegotiable document of title.

1. Except as otherwise provided in subsection 3, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.
2. A document of title other than one described in subsection 1 is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.
3. A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

41-07-05. (7-105) Reissuance in alternative medium.

1. Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- a. The person entitled under the electronic document surrenders control of the document to the issuer; and
 - b. The tangible document when issued contains a statement that it is issued in substitution for the electronic document.
- 2. Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection 1:
 - a. The electronic document ceases to have any effect or validity; and
 - b. The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.
- 3. Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:
 - a. The person entitled under the tangible document surrenders possession of the document to the issuer; and
 - b. The electronic document when issued contains a statement that it is issued in substitution for the tangible document.
- 4. Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection 3:
 - a. The tangible document ceases to have any effect or validity; and
 - b. The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

41-07-06. (7-106) Control of electronic document of title.

- 1. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.
- 2. A system satisfies subsection 1, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:
 - a. A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions d, e, and f, unalterable;
 - b. The authoritative copy identifies the person asserting control as:
 - (1) The person to which the document was issued; or

- (2) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
- c. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- d. Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- f. Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

41-07-07. (7-201) Person that may issue a warehouse receipt - Storage under bond.

- 1. A warehouse receipt may be issued by any warehouse.
- 2. If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

41-07-08. (7-202) Form of warehouse receipt - Effect of omission.

- 1. A warehouse receipt need not be in any particular form.
- 2. Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:
 - a. A statement of the location of the warehouse facility where the goods are stored;
 - b. The date of issue of the receipt;
 - c. The unique identification code of the receipt;
 - d. A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
 - e. The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
 - f. A description of the goods or the packages containing them;
 - g. The signature of the warehouse or its agent;

- h. If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
 - i. A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.
 - 3. A warehouse may insert in its receipt any terms that are not contrary to this title and do not impair its obligation of delivery under section 41-07-28 or its duty of care under section 41-07-10. Any contrary provision is ineffective.

41-07-09. (7-203) Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- 1. The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or
- 2. The party or purchaser otherwise has notice of the nonreceipt or misdescription.

41-07-10. (7-204) Duty of care - Contractual limitation of warehouse's liability.

- 1. A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.
- 2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.
- 3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

4. This section does not modify or repeal chapter 60-02.

41-07-11. (7-205) Title under warehouse receipt defeated in certain cases. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

41-07-12. (7-206) Termination of storage at warehouse's option.

1. A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 41-07-16.
2. If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection 1 and section 41-07-16, the warehouse may specify in the notice given under subsection 1 any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.
3. If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.
4. A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.
5. A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

41-07-13. (7-207) Goods must be kept separate - Fungible goods.

1. Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
2. If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of

overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

41-07-14. (7-208) Altered warehouse receipts. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

41-07-15. (7-209) Lien of warehouse.

1. A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.
2. A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. The security interest is governed by chapter 41-09.
3. A warehouse's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

 - a. Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

 - (1) Actual or apparent authority to ship, store, or sell;
 - (2) Power to obtain delivery under section 41-07-28; or
 - (3) Power of disposition under section 41-02-48, subsection 2 of section 41-02.1-34, subsection 2 of section 41-02.1-35,

section 41-09-40, subsection 3 of section 41-09-41, or other statute or rule of law; or

- b. Acquiesce in the procurement by the bailor or its nominee of any document.
- 4. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.
- 5. A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

41-07-16. (7-210) Enforcement of warehouse's lien.

- 1. Except as otherwise provided in subsection 2, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.
- 2. A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:
 - a. All persons known to claim an interest in the goods must be notified.
 - b. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
 - c. The sale must conform to the terms of the notification.
 - d. The sale must be held at the nearest suitable place to where the goods are held or stored.
 - e. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two

weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

3. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.
4. A warehouse may buy at any public sale held pursuant to this section.
5. A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
6. A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.
7. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
8. If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection 1 or 2.
9. A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

41-07-17. (7-301) Liability for nonreceipt or misdescription - Said to contain - Shipper's weight, load, and count - Improper handling.

1. A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of similar import, if that indication is true.
2. If goods are loaded by the issuer of a bill of lading:

- a. The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and
 - b. Words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.
3. If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.
4. The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.
5. A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

41-07-18. (7-302) Through bills of lading and similar documents of title.

1. The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.
2. If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.
3. The issuer of a through bill of lading or other document of title described in subsection 1 is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

- a. The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
- b. The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

41-07-19. (7-303) Diversion - Reconsignment - Change of instructions.

1. Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:
 - a. The holder of a negotiable bill;
 - b. The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
 - c. The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
 - d. The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.
2. Unless instructions described in subsection 1 are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

41-07-20. (7-304) Tangible bills of lading in a set.

1. Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
2. If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.
3. If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.
4. A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.
5. The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set.

Delivery in this manner discharges the bailee's obligation on the whole bill.

41-07-21. (7-305) Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.
2. Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 41-07-05, may procure a substitute bill to be issued at any place designated in the request.

41-07-22. (7-306) Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

41-07-23. (7-307) Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.
2. A lien for charges and expenses under subsection 1 on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.
3. A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

41-07-24. (7-308) Enforcement of carrier's lien.

1. A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the

goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.
3. A carrier may buy at any public sale pursuant to this section.
4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.
5. A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.
6. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
7. A carrier's lien may be enforced pursuant to either subsection 1 or the procedure set forth under subsection 2 of section 41-07-16.
8. A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

41-07-25. (7-309) Duty of care - Contractual limitation of carrier's liability.

1. A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.
2. Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.
3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

41-07-26. (7-401) Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title even if:

1. The document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issuance, form, or content;
2. The issuer violated laws regulating the conduct of its business;
3. The goods covered by the document were owned by the bailee when the document was issued; or
4. The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

41-07-27. (7-402) Duplicate document of title - Overissue. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 41-07-05. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

41-07-28. (7-403) Obligation of bailee to deliver - Excuse.

1. A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections 2 and 3 unless and to the extent that the bailee establishes any of the following:
 - a. Delivery of the goods to a person whose receipt was rightful as against the claimant;
 - b. Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
 - c. Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
 - d. The exercise by a seller of its right to stop delivery pursuant to section 41-02-84 or by a lessor of its right to stop delivery pursuant to section 41-02.1-74;
 - e. A diversion, reconsignment, or other disposition pursuant to section 41-07-19;
 - f. Release, satisfaction, or any other personal defense against the claimant; or
 - g. Any other lawful excuse.
2. A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless a person claiming the goods is a person against which the document of title does not confer a right under subsection 1 of section 41-07-32:
 - a. The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
 - b. The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

41-07-29. (7-404) No liability for good-faith delivery pursuant to document of title. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

1. The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
2. The person to which the bailee delivered the goods did not have authority to receive the goods.

41-07-30. (7-501) Form of negotiation and requirements of due negotiation.

1. The following rules apply to a negotiable tangible document of title:
 - a. If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.
 - b. If the document's original terms run to bearer, it is negotiated by delivery alone.
 - c. If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
 - d. Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.
 - e. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.
2. The following rules apply to a negotiable electronic document of title:
 - a. If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the

document to another person. Indorsement by the named person is not required to negotiate the document.

- b. If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
 - c. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.
- 3. Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.
- 4. The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

41-07-31. (7-502) Rights acquired by due negotiation.

- 1. Subject to sections 41-07-11 and 41-07-32, a holder to which a negotiable document of title has been duly negotiated acquires thereby:
 - a. Title to the document;
 - b. Title to the goods;
 - c. All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
 - d. The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.
- 2. Subject to section 41-07-32, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:
 - a. The due negotiation or any prior due negotiation constituted a breach of duty;
 - b. Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document

by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

- c. A previous sale or other transfer of the goods or document has been made to a third person.

41-07-32. (7-503) Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:
 - a. Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (1) Actual or apparent authority to ship, store, or sell;
 - (2) Power to obtain delivery under section 41-07-28; or
 - (3) Power of disposition under section 41-02-48, subsection 2 of section 41-02.1-34, subsection 2 of section 41-02.1-35, section 41-09-40, subsection 3 of section 41-09-41, or other statute or rule of law; or
 - b. Acquiesce in the procurement by the bailor or its nominee of any document.
2. Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 41-07-34 to the same extent as the rights of the issuer or a transferee from the issuer.
3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

41-07-33. (7-504) Rights acquired in absence of due negotiation - Effect of diversion - Stoppage of delivery.

1. A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.
2. In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:
 - a. By those creditors of the transferor which could treat the transfer as void under section 41-02-47 or 41-02.1-38;

- b. By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
 - c. By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
 - d. As against the bailee, by good-faith dealings of the bailee with the transferor.
3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.
4. Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 41-02-84 or a lessor under section 41-02.1-74, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

41-07-34. (7-505) Indorser not guarantor for other parties. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

41-07-35. (7-506) Delivery without indorsement - Right to compel indorsement. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

41-07-36. (7-507) Warranties on negotiation or delivery of document of title. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 41-07-37, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- 1. The document is genuine;
- 2. The transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- 3. The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

41-07-37. (7-508) Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

41-07-38. (7-509) Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 41-02, 41-02.1, or 41-05.

41-07-39. (7-601) Lost, stolen, or destroyed documents of title.

1. If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.
2. A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

41-07-40. (7-602) Judicial process against goods covered by negotiable document of title. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

41-07-41. (7-603) Conflicting claims - Interpleader. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

SECTION 19. Subsection 7 of section 41-08-03 of the North Dakota Century Code is created and enacted as follows:

7. A document of title is not a financial asset unless paragraph 3 of subdivision j of subsection 1 of section 41-08-02 applies.

SECTION 20. AMENDMENT. Subsection 2 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:

- a. "Applicant". Section 41-05-02.
- b. "Beneficiary". Section 41-05-02.
- c. "Broker". Section 41-08-02.
- d. "Certificated security". Section 41-08-02.
- e. "Check". Section 41-03-04.
- f. "Clearing corporation". Section 41-08-02.
- g. "Contract for sale". Section 41-02-06.
- h. "Customer". Section 41-04-04.
- i. "Entitlement holder". Section 41-08-02.
- j. "Financial asset". Section 41-08-02.
- k. "Holder in due course". Section 41-03-28.
- l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
- m. "Issuer" (with respect to a security). Section 41-08-17.
- n. "Issuer" (with respect to documents of title). Section 41-07-02.
- ~~o.~~ "Lease". Section 41-02.1-03.
- ~~p.~~ "Lease agreement". Section 41-02.1-03.
- ~~q.~~ "Lease contract". Section 41-02.1-03.
- ~~r.~~ "Leasehold interest". Section 41-02.1-03.
- ~~s.~~ "Lessee". Section 41-02.1-03.
- ~~t.~~ "Lessee in ordinary course of business". Section 41-02.1-03.
- ~~u.~~ "Lessor". Section 41-02.1-03.
- ~~v.~~ "Lessor's residual interest". Section 41-02.1-03.
- ~~w.~~ "Letter of credit". Section 41-05-02.
- ~~x.~~ "Merchant". Section 41-02-04.
- ~~y.~~ "Negotiable instrument". Section 41-03-04.
- ~~z.~~ "Nominated person". Section 41-05-02.
- ~~aa.~~ "Note". Section 41-03-04.
- ~~bb.~~ "Proceeds of a letter of credit". Section 41-05-14.

- ~~bb.~~ cc. "Prove". Section 41-03-03.
- ~~ee.~~ dd. "Sale". Section 41-02-06.
- ~~dd.~~ ee. "Securities account". Section 41-08-41.
- ~~ee.~~ ff. "Securities intermediary". Section 41-08-02.
- ~~ff.~~ gg. "Security". Section 41-08-02.
- ~~gg.~~ hh. "Security certificate". Section 41-08-02.
- ~~hh.~~ ii. "Security entitlement". Section 41-08-02.
- ~~ii.~~ jj. "Uncertificated security". Section 41-08-02.

SECTION 21. AMENDMENT. Paragraph 4 of subdivision c of subsection 2 of section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

- (4) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, electronic documents, or uncertificated certificates of deposit, and the secured party has control under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07 pursuant to the debtor's security agreement.

SECTION 22. AMENDMENT. Subsection 3 of section 41-09-17 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07:
 - a. May hold as additional security any proceeds, except money or funds, received from the collateral;
 - b. Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - c. May create a security interest in the collateral.

SECTION 23. AMENDMENT. Subsection 2 of section 41-09-18 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Within ten days after receiving an authenticated demand by the debtor:
 - a. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision b of subsection 1 of section 41-09-04 shall send to the bank with which the deposit account or uncertificated certificate of deposit is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

- b. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision c of subsection 1 of section 41-09-04 shall:
 - (1) Pay the debtor the balance on deposit in the deposit account or uncertificated certificate of deposit; or
 - (2) Transfer the balance on deposit into a deposit account or an uncertificated certificate of deposit in the debtor's name;
- c. A secured party, other than a buyer, having control of electronic chattel paper under section 41-09-05 shall:
 - (1) Communicate the authoritative copy of the electronic chattel paper to the debtor or the electronic chattel paper's designated custodian;
 - (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (3) Take appropriate action to enable the debtor or the debtor's designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- d. A secured party having control of investment property under subdivision b of subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~
- e. A secured party having control of a letter-of-credit right under section 41-09-07 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and
- f. A secured party having control of an electronic document shall:
 - (1) Give control of the electronic document to the debtor or its designated custodian;
 - (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate

to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

- (3) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 24. AMENDMENT. Subsection 3 of section 41-09-21 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided in subsection 4, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - a. Perfection of a security interest in the goods by filing a fixture filing;
 - b. Perfection of a security interest in timber to be cut; and
 - c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

SECTION 25. AMENDMENT. Subdivisions e and h of subsection 2 of section 41-09-30 of the North Dakota Century Code are amended and reenacted as follows:

- e. In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under subsection 5, 6, or 7 of section 41-09-32;
- h. In deposit accounts, electronic chattel paper, electronic documents, investment property, letter-of-credit rights, or uncertificated certificates of deposit, which is perfected by control under section 41-09-34;

SECTION 26. AMENDMENT. Subsection 5 of section 41-09-32 of the North Dakota Century Code is amended and reenacted as follows:

5. A security interest in certificated certificates of deposit, certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

SECTION 27. AMENDMENT. Subsection 1 of section 41-09-33 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2, a secured party may perfect a security interest in tangible certificated certificates of deposit, negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may

perfect a security interest in certificated securities by taking delivery of the certificated securities under section 41-08-27.

SECTION 28. AMENDMENT. Subsections 1 and 2 of section 41-09-34 of the North Dakota Century Code are amended and reenacted as follows:

1. A security interest in investment property, deposit accounts, uncertificated certificates of deposit, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07.
2. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, electronic documents, or uncertificated certificates of deposit is perfected by control under section 41-07-06, 41-09-04, 41-09-05, or 41-09-07 when the secured party obtains control and remains perfected by control only while the secured party retains control.

SECTION 29. AMENDMENT. Subsections 2 and 4 of section 41-09-37 of the North Dakota Century Code are amended and reenacted as follows:

2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
4. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

SECTION 30. AMENDMENT. Subsection 2 of section 41-09-58 of the North Dakota Century Code is amended and reenacted as follows:

2. A purchaser, other than a secured party, of the collateral takes free of the security interest to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SECTION 31. AMENDMENT. Subsection 2 of section 41-09-98 of the North Dakota Century Code is amended and reenacted as follows:

2. A secured party in possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in section 41-09-17.

SECTION 32. REPEAL. Chapter 41-07 of the North Dakota Century Code is repealed.

SECTION 33. APPLICATION. This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 355

HOUSE BILL NO. 1427

(Representatives Weisz, DeKrey, Pollert)

(Senator Espegard)

AGRICULTURAL LIEN WAIVER LIMITATIONS

AN ACT to amend and reenact section 41-09-99 of the North Dakota Century Code, relating to limitations on waiver of state law protections for agricultural liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-99 of the North Dakota Century Code is amended and reenacted as follows:

41-09-99. (9-602) Waiver and variance of rights and duties. Except as otherwise provided in section 41-09-119, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with use and operation of the collateral by the secured party;
2. Section 41-09-20, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
3. Section 41-09-22, which deals with perfection and priority of agricultural liens;
4. Subsection 3 of section 41-09-104, which deals with collection and enforcement of collateral;
4. 5. Subsection 1 of section 41-09-105 and subsection 3 of section 41-09-111 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
5. 6. Subsection 1 of section 41-09-105 and subsection 4 of section 41-09-111 to the extent that they require accounting for or payment of surplus proceeds of collateral;
6. 7. Section 41-09-106 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
7. 8. Subsection 2 of section 41-09-107, section 41-09-108, and section 41-09-110, which deal with disposition of collateral;
8. 9. Subsection 6 of section 41-09-111, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
9. 10. Sections 41-09-115 through 41-09-117, which deal with acceptance of collateral in satisfaction of obligation;

- ~~40.~~ 11. Section 41-09-118, which deals with redemption of collateral;
- ~~44.~~ 12. Section 41-09-119, which deals with permissible waivers; and
- ~~42.~~ 13. Sections 41-09-120 and 41-09-121, which deal with the secured party's liability for failure to comply with this chapter.

Approved March 22, 2005

Filed March 22, 2005

OCCUPATIONS AND PROFESSIONS

CHAPTER 356

SENATE BILL NO. 2082

(Political Subdivisions Committee)

(At the request of the Abstracters' Board of Examiners)

ABTRACTOR CERTIFICATION AND LIMITED ABSTRACTS

AN ACT to create and enact a new section to chapter 43-01 of the North Dakota Century Code, relating to the temporary certification of an abstractor to work in a county that has no certified abstractor; and to amend and reenact sections 43-01-15.1 and 43-01-16 of the North Dakota Century Code, relating to the furnishing of limited abstracts upon request and the cancellation of an abstractor's certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request - Zoning and subdivision exclusion upon request. An abstractor shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstractor shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstractor may charge a fee of one dollar and fifty cents, and no more. When requested to do so, an abstractor shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted. Further, when requested to do so, an abstractor shall omit zoning and subdivision ordinances but shall note and exclude them from the abstract of title. An abstractor may charge a per entry fee under section 43-01-18 for each omitted zoning and subdivision ordinance.

SECTION 2. AMENDMENT. Section 43-01-16 of the North Dakota Century Code is amended and reenacted as follows:

43-01-16. Cancellation or denial of certificate - Discipline. The board, after receiving a written and signed complaint alleging a violation of any ground for

discipline under this section and upon thirty days' notice, may require any person, firm, corporation, or limited liability company holding a certificate of authority, or any person holding a certificate as a registered abstractor, to show cause why the same should not be ~~annulled~~ canceled or other disciplinary measures taken. The board may deny an application for a certificate of authority or a certificate of registration for any reason that a certificate of authority or a certificate of registration may be canceled or disciplinary measures taken. A certificate of authority or certificate of registration may be ~~recalled and annulled~~ canceled or disciplinary measures taken, however, only for one or more of the following reasons:

1. Violation of the provisions of this chapter or the board's administrative rules by the holder.
2. If the holder thereof has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as an abstractor, or if, following conviction of an offense, the board finds the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
3. A finding by the board that the holder is guilty of habitual carelessness, inattention to business or unreasonable timeliness of service, or intoxication; or the use of drugs to such an extent as to incapacitate the holder for business, including not preparing an abstract as requested under section 43-01-15.1.
4. A finding by the board that the holder is guilty of fraudulent practices.
5. A certificate of authority may be canceled, or other disciplinary measures taken, upon the failure of the holder thereof to provide additional security as provided by section 43-01-12, or upon failure to file an abstractor's liability policy in lieu of any canceled policy, before such cancellation becomes effective, or a surety bond in place thereof.

The board may inspect an abstractor's records to determine compliance with this chapter or rules adopted under this chapter. The board may adopt rules under chapter 28-32 addressing discipline of abstractors, including establishing standards for timeliness of service based on a presumed standard turnaround time of three weeks or less. If the certificate of authority is held by a firm, corporation, or limited liability company, the provisions of this section shall be applicable to the members, officers, or managers thereof. Disciplinary measures that the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a monetary penalty of no greater than five hundred dollars for each violation. In addition, an individual or organization found in violation of the requirements of this section may be assessed costs, including attorney's fees, by the board. An entity whose certificate of authority has been canceled or suspended must surrender all customer abstracts and pending orders to the board immediately upon being notified of the cancellation or suspension. The board shall take reasonable measures to contact the customers.

SECTION 3. A new section to chapter 43-01 of the North Dakota Century Code is created and enacted as follows:

Temporary authority of an abstractor to act in an additional county.

1. If it appears to the board that there is no abstracter authorized to engage in and carry on the business of an abstracter of real estate titles in a county or that there is an authorized abstracter in a county who is unable to perform the duties of an abstracter due to death, disability, a disaster or emergency, or disciplinary action, the board may authorize an individual or organization having a certificate of authority and certificate of registration to operate in another county to operate in the county having no abstracter through the issuance of a temporary certificate of authority. The board may not charge an abstracter for the temporary certificate of authority. The board may require additional security than provided under section 43-01-11. The abstracter operating under the temporary certificate of authority is not required to have a complete set of abstract books or records of all instruments of record in the office of the recorder in and for the county in which the abstracter is temporarily engaged in business, nor need the abstracter have been engaged in the preparation of such books or records. The temporary certificate of authority may not exceed such time as the board has determined an abstracter having a regular certificate of authority and certificate of registration is able to engage in and carry on the business of an abstracter of real estate titles in the county, but the abstracter holding the temporary certificate of authority may complete any work already engaged. The abstracter having a temporary certificate of authority may seek to operate in the county on a regular basis through compliance with all statutory requirements.
2. The board may establish a fund to provide for additional expenses of an abstracter operating under a temporary certificate of authority. The fund may be paid for by an additional fee fixed by the board of no more than fifty dollars per year for each certificate of registration. The fund may not exceed five thousand dollars. The board may pay the expenses, including mileage, meals, and lodging, of an abstracter operating under a temporary certificate of authority at the rates established for state employees on official business.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 357

SENATE BILL NO. 2026

(Legislative Council)
(Commerce Committee)

CONTRACTOR LICENSURE AND REGULATION

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to licensure and regulation of contractors; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

43-07-02. License required - Enjoining operation without license. ~~No A~~ person may ~~not~~ engage in the business nor act in the capacity of a contractor within this state when the 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 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 North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Failure to grant - Revocation.

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar 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 North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance coverage satisfactory to workforce safety and insurance ~~along with such.~~ If the registrar deems it appropriate or necessary, ~~the registrar may also require any 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, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. 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.
2. The registrar may refuse to grant a license if the registrar determines the application contains false, misleading, or incomplete information; the applicant fails or refuses to authorize or pay for criminal history

information requested by the registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.

3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
4. a. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. c. Maintain an active status of a corporation or registration as a foreign corporation;
4. d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. e. File or renew a trade name registration as required by chapter 47-25;
6. f. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. g. File or renew a limited partnership or foreign limited partnership.
4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering ~~into~~ new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters ~~into~~ new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

SECTION 3. AMENDMENT. Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.

1. 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 completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, 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 unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.~~

2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. 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 by the March first deadline, the contractor's license 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 then 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~~ the registrar shall return the application to the contractor who ~~will then be~~ is subject to the provisions of section 43-07-09.

SECTION 4. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license revocation - Consumer fraud action.

1. 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~~ any of the following acts or omissions:

- 4- a. Abandonment of any contract without legal excuse after a deposit of money or other consideration has been provided to the licensee. A rebuttable presumption of abandonment arises if:
 - a- (1) A contractor fails substantially to commence any work agreed upon in writing within, unless the failure is due to circumstances beyond the control of the contractor:
 - (a) Within sixty days of a starting date agreed upon in writing; or
 - (b) Within ninety days of the contract date if no starting date is agreed upon in writing; or
 - b- (2) A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, or within one hundred eighty days of the contract date if no completion date is agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
 - 2- b. 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- c. Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars.
 - 4- d. The making of any false or misleading statement in any application for a license or renewal ~~thereof~~ or by violating ~~any provisions of~~ this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.
 - 5- e. Engaging in work without any trade or professional license as required for ~~such the~~ work pursuant to local, state, or federal law.
 - 6- f. Failure to ~~fully~~ refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen ~~under subsection 4~~ and the contracting party has made a request to the licensee for a refund.
2. The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable ~~person~~ individual could conclude that ~~one or more any of the above~~ acts or omissions in subsection 1 has been committed.
 3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 and subjects the licensee to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

SECTION 5. AMENDMENT. Section 43-07-18 of the North Dakota Century Code is amended and reenacted as follows:

43-07-18. Penalty. Any person acting in the capacity of a contractor ~~within the meaning of this chapter~~ without a license ~~as herein provided~~ is guilty of a class ~~B~~ A misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person ~~makes application~~ applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 358

HOUSE BILL NO. 1437

(Representatives Koppelman, Dietrich, Haas)
(Senators Espegard, Krebsbach, Nething)

RESIDENTIAL BUILDING DEFECT REPAIR

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to notice and time for contractors to repair defects in residential buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is created and enacted as follows:

Warranty repairs - Required notice. Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.

Approved April 20, 2005
Filed April 20, 2005

CHAPTER 359

SENATE BILL NO. 2068

(Senator J. Lee)

(Representative Price)

(At the request of the State Board of Medical Examiners)

MEDICAL BOARD MEMBERSHIP AND INVESTIGATIONS

AN ACT to amend and reenact subsection 1 of section 43-17-03 and subsection 1 of section 43-17.1-02 of the North Dakota Century Code, relating to state board of medical examiners membership and investigative panels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint a state board of medical examiners consisting of ~~eleven~~ twelve members, ~~eight~~ nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

SECTION 2. AMENDMENT. Subsection 1 of section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of ~~five~~ six members of the board. ~~Four~~ Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board. ~~The president of the board shall serve on neither investigative panel.~~

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 360

SENATE BILL NO. 2266

(Senators Traynor, Andrist, Lindaas)

(Representatives Metcalf, Nicholas)

PHYSICIAN LOAN REPAYMENT PROGRAM

AN ACT to amend and reenact section 43-17.2-01, subsection 5 of section 43-17.2-02, subsection 3 of section 43-17.2-03, and section 43-17.2-08 of the North Dakota Century Code, relating to the state-community matching physician loan repayment program and powers of the state health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.2-01. State-community matching physician loan repayment program.

1. The North Dakota state-community matching physician loan repayment program is established as provided by this chapter.
2. The purpose of the program is to increase the number of physicians practicing medicine in North Dakota communities with defined health professional medical need.
3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the state board of medical examiners or by an accrediting body approved by the board.
4. ~~Loan repayment funds consist of a fifty percent match from the state and a fifty percent match from the selected community.~~
5. Each recipient is limited to a ~~forty~~ forty-five thousand dollar maximum loan repayment from the state to be paid over four two years. The loan repayment from the selected community must be in an amount that equals or exceeds the amount of loan repayment provided by the state. The selected community may negotiate a period of service longer than two years.
6. ~~5. The state health council shall may select up to five recipients in five communities any number of recipients and communities each year as participants in the program subject to the availability of funding.~~

SECTION 2. AMENDMENT. Subsection 5 of section 43-17.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Enter into a ~~four-year~~ two-year nonrenewable loan repayment program contract with the applicant and the selected community to provide

repayment of education loans in exchange for the physician agreeing to practice medicine in the selected community.

SECTION 3. AMENDMENT. Subsection 3 of section 43-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A physician who receives loan repayment under this chapter:
 - a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the state board of medical examiners or by an accrediting body approved by the board;
 - b. ~~Must be enrolled in or have graduated from an accredited graduate training program in medicine prior to or within one year after submitting an application to participate in the loan repayment program and not have practiced full-time medicine in this state within three years~~ for more than one year before the date of the application;
 - c. ~~Must be licensed~~ have a full and unrestricted license to practice medicine in this state;
 - d. Shall submit an application to participate in the loan repayment program; and
 - e. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of ~~four~~ two years at the selected community if the applicant receives a loan repayment program contract.

SECTION 4. AMENDMENT. Section 43-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.2-08. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under this chapter is ~~four~~ a minimum of two years.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 361

HOUSE BILL NO. 1258

(Representative Porter)

DENTAL PRACTICE AND REGULATION

AN ACT to create and enact two new sections to chapter 43-20 of the North Dakota Century Code, relating to a scope of practice and continuing education requirements for dental assistants; and to amend and reenact subsection 2 of section 43-20-05, sections 43-20-06, 43-20-12, and 43-20-12.1, subsection 3 of section 43-28-01, subsection 2 of section 43-28-02, subsection 3 of section 43-28-06, subsection 2 of section 43-28-10, sections 43-28-12.2, 43-28-17, and 43-28-18, and subsection 2 of section 43-28-22 of the North Dakota Century Code, relating to the regulation of dentists, dental hygienists, and dental assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Failure, neglect, or refusal to renew a license ~~annually~~ biennially.

SECTION 2. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Fees Cancellation - Display Inactive status. In the month prior to expiration, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. If a licensee fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental hygienist of the cancellation. The payment of the biennial fee within that thirty-day period, with an additional sum determined by the board, excuses the default. The board may collect the fee by suit. Each licensed hygienist shall display conspicuously at the place of employment the annual registration license. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the individual may not engage in the practice of dental hygiene in the state until the individual submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule of the board.

SECTION 3. AMENDMENT. Section 43-20-12 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12. Dental hygienist - ~~Dental assistant~~ - Scope of permitted practice.

- 4- ~~A licensed dentist may delegate to a competent dental hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards, for rapid palatal expanders, and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.~~
- 2- ~~A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners. The board of dental examiners may adopt rules governing the scope of practice of dental hygienists.~~

SECTION 4. AMENDMENT. Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists.

~~Upon the second anniversary of the issuance of a certificate of registration to practice dental hygiene and each two years thereafter, each person~~

1. ~~At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes an affidavit for reporting of continuing education and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. Each individual licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person licensee has attended, or participated in, the amount of continuing education in dental hygiene as is required by the board. The minimum requirement may not be less than sixteen hours during the preceding two years of licensure. The board may accept for compliance with this the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:~~
 - 4- ~~a. Attendance~~ Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
 - 2- ~~b. Research~~ Proof of research, graduate study, teaching, or service as a clinician.
 - 3- ~~c. Any~~ Proof of any other evidence of continuing education approved by the board.
2. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of credit from continuing education activities. If a licensee is selected for an audit of the licensee's continuing education activities, the licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's sworn affidavit. The failure

to comply with the audit may be grounds for nonrenewal of the licensee's license. Any ~~licensed person~~ licensee who fails to comply with ~~this the~~ continuing education requirement may, at the discretion of the board, be reexamined to determine the ~~person's~~ individual's competency to continue licensure. If, in the opinion of the board, the ~~licensed person~~ individual does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

SECTION 5. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental assistant - Scope of permitted practice. A dentist may delegate to a dental assistant procedures over which the dentist exercises full responsibility. A dental assistant may perform any delegated procedure over which the dentist exercises direct, indirect, or general supervision as permitted by rules adopted by the board of dental examiners.

SECTION 6. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirement for registered dental assistants.

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a licensee fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:

 - a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
 - b. Proof of research, graduate study, teaching, or service as a clinician.
 - c. Proof of any other continuing education approved by the board.
2. The board may select a random sample of the registrants for audit of continuing education credits. Each registrant shall maintain certificates or records of continuing education credit. The board shall notify a registered dental assistant selected for a continuing education audit. If a registered dental assistant is selected for a continuing education audit, the dental assistant shall provide satisfactory documentation of

attendance at or participation in the continuing education activities included on the registrant's sworn affidavit. The failure to comply with an audit may be grounds for nonrenewal of the registration. A dental assistant who fails to comply with the continuing education requirements may be reexamined by the board to determine the individual's competency to continue engaging in dental assisting activities. If the board determines that the dental assistant is not qualified, the board shall suspend the registration until the individual provides acceptable evidence to the board of the individual's competency to practice as a dental assistant.

SECTION 7. AMENDMENT. Subsection 3 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the ~~annual~~ biennial registration fee required by this chapter.

SECTION 8. AMENDMENT. Subsection 2 of section 43-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. To students enrolled in and regularly attending any dental college or dental hygiene or dental assisting program recognized as such by the board, if their acts are done in dental college or the dental hygiene or dental assisting program and under the direct supervision of their instructor; or to students who are in training in dental ~~colleges~~ programs recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise ~~such externships~~ an externship by the appropriate accrediting committee, including the board.

SECTION 9. AMENDMENT. Subsection 3 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Issue, suspend, revoke, limit, ~~cancel~~, restrict, and reinstate licenses to practice dentistry or dental hygiene and the ~~annual~~ biennial certificates of registration upon any grounds authorized by this chapter.

SECTION 10. AMENDMENT. Subsection 2 of section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The person holds a valid ~~annual~~ biennial certificate of registration.

SECTION 11. AMENDMENT. Section 43-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists - Audit.
Upon the second anniversary of the issuance of a certificate of registration to practice dentistry and each two years thereafter, each person

1. At least thirty days before January first of each even-numbered year, the board shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. Each individual licensed to practice dentistry in this state

shall provide the board evidence, of a nature suitable to the board, that the ~~licensed person~~ licensee has attended, or participated in, the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than thirty-two hours during the preceding two years of licensure. The board may accept for compliance with ~~this the continuing education~~ requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

- 1- ~~a.~~ a. ~~Attendance~~ Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
 - 2- ~~b.~~ b. ~~Research~~ Proof of research, graduate study, teaching, or service as a clinician.
 - 3- ~~c.~~ c. ~~Any Proof of any other evidence of~~ continuing education approved by the board.
2. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's continuing education form. The failure to comply with the audit is grounds for nonrenewal of the license. Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

SECTION 12. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - ~~Revocation~~ Cancellation of license - Inactive status. ~~Whenever~~ If a licensed dentist fails to pay the annual biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may ~~revoke~~ cancel the license to practice dentistry and ~~notify the dentist of the revocation,~~ notify the dentist of the cancellation, and record the cancellation. The payment of the annual biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

SECTION 13. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon ~~a person's~~ the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that ~~a person~~ the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted an unlicensed ~~persons~~ individual to practice dentistry in the office under the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.
9. ~~Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners. However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of the association.~~
- 10- Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
- 44- 10. Used any advertising of any character tending to mislead and deceive the public.
- 42- 11. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
- 43- 12. Prescribed medications for reasons or conditions outside the scope of dental practice.
- 44- 13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
- 46- 14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.

- ~~46.~~ 15. Willfully engaged in fraudulent submission of insurance claims.
- ~~47.~~ 16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
- ~~48.~~ 17. Made any false representations that the ~~person~~ individual is the holder of a license or certificate of registration to practice dentistry.
- ~~49.~~ 18. Made any false claims that the ~~person~~ individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
- ~~20.~~ 19. Failed to comply with commonly accepted national infection control guidelines and standards.
- 20. Abandoned the dentist's practice as defined by rules adopted by the board.
- 21. Violated this chapter.

SECTION 14. AMENDMENT. Subsection 2 of section 43-28-22 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Where the license and certificate of registration has been revoked for nonpayment of ~~annual~~ biennial registration fees required by this chapter, the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board. However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the ~~annual~~ biennial registration fee to submit to a reexamination as to the ~~person's~~ individual's qualification to practice dentistry before the ~~person~~ individual is reinstated, if the board ~~in the exercise of its discretion finds and~~ determines that the best interests of the public, and the applicant, will be served thereby.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 362

HOUSE BILL NO. 1475

(Representatives Potter, Dietrich, Weiler)
(Senators J. Lee, Tallackson)

ORGANIZATION REAL ESTATE LICENSE

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to real estate salesperson licenses for business organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Salesperson license issued to an organization - Fees.

1. The commission may grant a salesperson license to an organization if:
 - a. The organization is owned solely by one individual who is licensed as a salesperson;
 - b. The organization does not engage in any real estate transaction as a third-party agent or in any other capacity requiring a license under this chapter; and
 - c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson that is an organization is not relieved of any obligation to supervise the employed or associated salesperson or of any other requirements under this chapter.
3. An individual who forms a salesperson organization is not by nature of that act relieved of any personal liability for licensed activities.
4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 363

HOUSE BILL NO. 1240

(Representatives Dietrich, Carlson, Potter, Weiler, Wieland)
(Senator J. Lee)

REALTOR EDUCATION REQUIREMENTS

AN ACT to amend and reenact subsection 4 of section 43-23-08 of the North Dakota Century Code, relating to real estate salesperson education requirements for licensure; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Each~~ As a prerequisite for licensure, an applicant for a salesperson's license must have successfully completed at least thirty classroom shall furnish to the commission evidence the applicant has successfully completed at least forty-five hours in a course courses of study approved by the commission, and each. Within one year after initial licensure as a salesperson, the salesperson's broker shall furnish to the commission evidence of the salesperson's successful completion of fifteen postlicensure hours in courses of study approved by the commission. An applicant for a broker's license must have successfully completed an additional sixty classroom hours in a course courses of study approved by the commission. ~~Applicants~~ An applicant for a salesperson's license may take the licensing examination ~~prior to the before fulfillment of the prerequisite educational requirement;~~¹ however, ~~no the commission may not issue a salesperson's license can be issued~~ to an applicant unless satisfactory evidence of completion of this prerequisite education requirement is furnished to the commission. ~~Applicants~~ An applicant for a broker's license must have satisfactorily fulfilled the educational requirement ~~prior to before~~ taking the broker's licensing examination. ~~As used throughout this section, the term "classroom hours" means the actual time during such course of study that the class is actually in session. The requirements of this subsection do not apply to license renewals under section 43-23-08.2.~~

SECTION 2. EFFECTIVE DATE. This Act becomes effective January 1, 2006.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 364

HOUSE BILL NO. 1124

(Industry, Business and Labor Committee)
(At the request of the North Dakota Real Estate Appraiser
Qualifications and Ethics Board)

REAL ESTATE APPRAISAL PERMITS AND PRACTICE

AN ACT to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to the issuance of real estate appraiser permits to applicants licensed or certified by another state; to amend and reenact sections 43-23.3-04, 43-23.3-10, 43-23.3-11, 43-23.3-19, and 43-23.3-23 of the North Dakota Century Code, relating to real estate appraisers and the practice of real estate appraisal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions. Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser licensed or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a ~~nonresident temporary~~ permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 2. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Issuance of permits to applicants licensed or certified by another state.

The board may issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state.

SECTION 3. AMENDMENT. Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-10. ~~Term~~ Expiration of permit. Permits expire on December thirty-first of each year. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 4. AMENDMENT. Section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-11. ~~Nonresident~~ Temporary permit.

1. ~~A nonresident~~ The board may issue a temporary permit to an applicant who is licensed or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.
2. An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last-known business address of the ~~nonresident appraiser~~ applicant.
- ~~2.~~ 3. The board may issue a temporary permit to a ~~nonresident~~ an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.
- ~~3.~~ 4. The board shall issue a temporary permit to ~~practice to a nonresident~~ an applicant who has complied with this section. The board may require the ~~nonresident applicant~~ to pay a temporary appraiser's fee. The board shall determine the amount of the temporary fee and the duration of the temporary permit.
4. If the board determines that another state has substantially equivalent requirements and the board enters into a reciprocity agreement, an applicant from that state may obtain a permit to practice as either a licensed or certified appraiser upon application and payment of any required permit fee.

SECTION 5. AMENDMENT. Section 43-23.3-19 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-19. Continuing education. Each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board. The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.

2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 6. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser licensed or certified in another state who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a ~~nonresident temporary~~ permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 365

SENATE BILL NO. 2366

(Senators G. Lee, J. Lee, Nething)

(Representatives Martinson, Price)

PHYSICAL THERAPY PRACTICE

AN ACT to create and enact chapter 43-26.1 of the North Dakota Century Code, relating to the practice of physical therapy; to amend and reenact subsection 1 of section 10-31-04 of the North Dakota Century Code, relating to statutory cross-reference; to repeal chapter 43-26 of the North Dakota Century Code, relating to the practice of physical therapy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

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 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~~ 43-26.1 and 43-40.

SECTION 2. Chapter 43-26.1 of the North Dakota Century Code is created and enacted as follows:

43-26.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of physical therapy.
2. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.
3. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
4. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session

in which a physical therapist assistant or a physical therapy aide is involved in components of care.

5. "Physical therapist" means a person licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.
6. "Physical therapist assistant" means a person who is licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.
7. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.
8. "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
9. "Practice of physical therapy" means:
 - a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.
 - b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.
 - c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
 - d. Engaging as a physical therapist in administration, consultation, education, and research.
10. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.

11. "Testing" means standard methods and techniques used to gather data about the patient.

43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies. The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, two licensed physicians, and a citizen who is not a health care professional. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. A person may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term. Each physical therapist appointed must have had at least three years of physical therapy experience in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties.

43-26.1-03. Powers of the board. The board may:

1. Evaluate the qualifications of applicants for licensure.
2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.
3. Issue licenses to persons who meet the requirements of this chapter.
4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
5. Adopt and revise rules consistent with this chapter.
6. Meet at least annually and such other times as deemed necessary. A majority of board members shall constitute a quorum for the transaction of business.
7. Establish mechanisms for assessing the continuing professional competence of physical therapists to engage in the practice of physical therapy.
8. Establish and collect fees for sustaining the necessary operation and expenses of the board.
9. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.
10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, and board rules, policies, and procedures.
11. Maintain a current list of all persons regulated under this chapter. This information includes the person's name, current business address, business telephone number, and board license number.

12. Provide information to the public regarding the complaint process.
13. Employ necessary personnel to carry out the administrative work of the board.
14. Enter into contracts for services necessary for enforcement of this chapter.
15. Report final disciplinary action taken against a licensee to a national disciplinary data base recognized by the board or as required by law.

43-26.1-04. Qualifications for licensure.

1. An applicant for a license as a physical therapist or physical therapist assistant shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.
 - d. Pass the examination approved by the board.
2. An applicant for a license as a physical therapist who has been educated outside of the United States shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:
 - (1) Graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy without restriction.
 - (2) Provided written proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
 - (3) Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule.
 - (4) Completed any additional education or clinical experience as required by the board.

- d. Pass the board-approved English proficiency examinations if the applicant's native language is not English.
 - e. Pass the examination approved by the board.
3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

43-26.1-05. Application and examination.

1. An applicant for licensure shall file a complete application as required by the board. The applicant shall include application fees as prescribed in this chapter and under applicable rules.
2. The board shall provide examinations at times and places it determines. The board shall determine the passing score.
3. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination shall test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.
4. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination shall test for requisite knowledge and skills in the technical application of physical therapy services.
5. An applicant for licensure who does not pass the examination on the first attempt may retake the examination one additional time without reapplication for licensure within six months of the first failure. Before the board may approve an applicant for subsequent testing beyond two attempts, an applicant shall reapply for licensure and shall submit evidence satisfactory to the board of having successfully completed additional clinical training or coursework, or both, as the board determines.
6. If the board determines that an applicant or examinee has engaged, or has attempted to engage, in conduct that subverts or undermines the integrity of the examination process, the board may disqualify the applicant from taking the examination.

43-26.1-06. Licensure by endorsement. The board shall issue a license to a physical therapist or physical therapist assistant who has a license in good standing from another jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state.

43-26.1-07. Exemptions from licensure.

1. This chapter does not restrict a person licensed under any other law of this state from engaging in the profession or practice for which that person is licensed as long as that person does not represent, imply, or

claim that that person is a physical therapist, physical therapist assistant, or a provider of physical therapy.

2. The following persons are exempt from the licensure requirements of this chapter when engaged in the following activities:

- a. A person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under on-site supervision of a physical therapist.
- b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulations for state licensure of health care providers.
- c. A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating, or providing physical therapy in connection with teaching or participating in an educational seminar in the state of no more than sixty days in a calendar year.
- d. A physical therapist who is licensed in another United States jurisdiction if that person is providing services in accordance with section 43-51-03.
- e. A physical therapist who is licensed in another United States jurisdiction or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than sixty days in a calendar year.
- f. A physical therapist assistant who is licensed in another United States jurisdiction and is assisting a physical therapist engaged specifically in activities related to subdivisions b, c, and e is exempt from the requirements of licensure under this chapter.

43-26.1-08. License renewal - Changes. A licensee shall renew the license annually pursuant to board rules. A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee. Each licensee is responsible for reporting to the board a name change and changes in business and home address within thirty days of the date of change.

43-26.1-09. Reinstatement of license.

1. The board may reinstate an expired license upon payment of a renewal fee and reinstatement fee.
2. If a physical therapist's or physical therapist assistant's license has expired for more than three consecutive years, that person shall reapply for licensure and shall demonstrate to the board's satisfaction

competence to practice physical therapy, by one or more of the following as determined by the board:

- a. Practice for a specified time under a restricted license.
- b. Complete prescribed remedial courses.
- c. Complete continuing competence requirements for the period of the expired license.
- d. Pass an examination.

43-26.1-10. Fees. The board shall establish and collect fees not to exceed:

1. Two hundred dollars for an application for an original license. This fee is nonrefundable.
2. One hundred dollars for an annual renewal of the license.
3. Two hundred dollars for an application for reinstatement of a license.
4. Fifty dollars for late renewal of a license.

43-26.1-11. Patient care management.

1. A physical therapist is responsible for managing all aspects of each patient's physical therapy. A physical therapist shall provide:
 - a. Each patient's initial evaluation and documentation.
 - b. Periodic reevaluation and documentation of each patient.
 - c. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.
2. If the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise, a physical therapist shall so inform the patient or client and refer to an appropriate practitioner.
3. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under the physical therapist's direction and supervision.
4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides that provide for the delivery of care that is safe, effective, and efficient.
 - a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.

- b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the onsite supervision of a physical therapist who is onsite and present in the facility. This supervision may extend to offsite supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.
- 5. A physical therapist's responsibility for patient care management shall include accurate documentation and billing of the services provided.

43-26.1-12. Consumers' rights.

- 1. The public shall have access to the following information:
 - a. A list of physical therapists that includes place of practice, license number, date of license, and expiration and status of license.
 - b. A list of physical therapist assistants licensed in the state, including place of employment, license number, date of license, and expiration and status of license.
 - c. The board's address and telephone number.
- 2. A patient has freedom of choice in selection of services and products.
- 3. Information relating to the physical therapist-patient relationship is confidential and may not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient or as permitted by law.
- 4. Any person may submit a complaint to the board regarding any licensee, or any other person potentially in violation of this chapter.

43-26.1-13. Grounds for disciplinary actions. The board may refuse to license any physical therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

- 1. Violating any provision of this chapter, board rules, or a written order of the board.
- 2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
- 3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise.
- 4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
- 5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.

6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.
7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.
8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under section 12.1-33-02.1.
9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.
10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.
11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.
 - b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
 - c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.
13. Charging unreasonable or fraudulent fees for services performed or not performed.
14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.
15. Having been adjudged mentally incompetent by a court.
16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.
17. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.

18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.
20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.
21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

43-26.1-14. Lawful practice.

1. A physical therapist licensed under this chapter is fully authorized to practice physical therapy as defined herein. The board shall require each licensee to provide the board with evidence of competence regarding the various elements of manual therapy the licensee practices so that the board may determine satisfactory competency levels and requirements as provided under section 43-26.1-03.
2. A physical therapist shall adhere to the standards of ethics of the physical therapy profession as established by rule.
3. A physical therapist may purchase, store, and administer topical medications, including aerosol medications as part of the practice of physical therapy as defined herein, but shall not dispense or sell any of the medications to patients. A physical therapist shall comply with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

43-26.1-15. Terms and titles.

1. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter.
2. Except as otherwise provided by law, a person or business entity, and its employees, agents, or representatives, shall not use in connection with that person's or entity's name or activity the words "physical therapy", "physical therapist", "physiotherapist", "registered physical

therapist", the letters "PT", "MPT", "DPT", "LPT", "RPT", or any other words, abbreviation or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" unless the individual performing that service is licensed as a physical therapist under this chapter.

3. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure under this chapter.
4. A person shall not use the title "physical therapist assistant", the letters "PTA", or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed under this chapter.

43-26.1-16. Representations and billings without licensure prohibited - Enforcement - Injunctions. No person or business entities of any type shall practice physical therapy or hold themselves out, represent themselves, or send out billings as providing physical therapy services, without personal licensure or the use of licensed employees as provided in this chapter. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services. The board's executive officer, under the board's direction, shall aid state's attorneys in the enforcement of this chapter and the prosecution of any violations thereof. In addition to the criminal penalties provided by this chapter, the civil remedy of injunction shall be available to restrain and enjoin violations of this chapter without proof of actual damages sustained by any person.

43-26.1-17. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

SECTION 3. REPEAL. Chapter 43-26 of the North Dakota Century Code is repealed.

Approved April 4, 2005
Filed April 4, 2005

CHAPTER 366

HOUSE BILL NO. 1200

(Representative Keiser)

NONPROFIT DENTAL SERVICES

AN ACT to amend and reenact section 43-28-25 of the North Dakota Century Code, relating to dental services offered through a nonprofit organization; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.
2. For any dentist to help or assist any unlicensed person to perform any act or operation ~~which~~ that is defined in ~~this chapter~~ as the practice of dentistry.
3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.
4. For any dentist to work or cooperate with dental laboratories ~~which~~ that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.
5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board; which must contain:
 - a. The name and address of such unlicensed person;
 - b. The patient's name or number, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;
 - c. The date on which it was written;
 - d. A prescription of the work to be done, with diagram, if necessary;

- e. A specification of the type and quality of materials to be used; and
- f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or ~~its~~ the board's agent for two years.

- 6. For any dentist:
 - a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;
 - b. To fail to retain a duplicate copy thereof for two years; or
 - c. To refuse to allow the board or ~~its~~ the board's agent to inspect such prescription during the two-year period of time.
- 7. For any unlicensed person:
 - a. To perform any such service without first having obtained such prescription;
 - b. To fail to retain the original thereof for two years; or
 - c. To refuse to allow the board or ~~its~~ the board's agent to inspect it during such two-year period of time.
- 8. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
- 9. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business ~~where dental operations, dental oral surgery, or dental services are at which the practice of dentistry is performed.~~ This provision does not apply to a board-approved medical clinics and public health settings where dentists are clinic, hospital, or public health setting with which a dentist is associated and; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist who. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 367

HOUSE BILL NO. 1165

(Government and Veterans Affairs Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE SERVICES LICENSING

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to exceptions to private investigative services licensing; to amend and reenact sections 43-30-01, 43-30-02, and 43-30-03 of the North Dakota Century Code, relating to licensing persons engaged in private investigative service or private security service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the North Dakota Century Code is amended and reenacted as follows:

43-30-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.
2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the "common law" test.
3. "License" includes a registration issued by the board.
- ~~3.~~ 4. "Licensee" includes an individual who is registered by the board.
4. ~~5.~~ "Private investigative service" means obtaining or furnishing information with reference to any act or individual, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
 - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
 - b. Investigating the credibility of persons;
 - c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
 - d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
 - e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;

- f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
 - g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
 - h. Investigating the identity or location of persons suspected of crimes or wrongdoing.
- 5- 6. "Private security service" means furnishing for hire security officers or other persons to ~~protect~~;
 - a. Protect persons or property, ~~or to prevent the~~;
 - b. Prevent or detect theft or the unlawful taking of goods, wares, ~~and~~ or merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, ~~or the business of performing the service of such security officer or other person for any of these purposes;~~
 - c. Control, regulate, or direct the flow of or movements of the public, whether by vehicle or otherwise, to assure protection of private property;
 - d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass on private property;
 - e. Perform the service of a security officer or other person for any of these purposes; or
 - f. Transport money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery.

SECTION 2. AMENDMENT. Section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

43-30-02. Exemptions. This chapter does not apply to:

1. Any investigator or officer directly employed by or under any direct contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties. Subcontractors of agencies directly contracted with these entities are not exempted.
2. Any state's attorney.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.

4. Any person whose sole investigative business is the furnishing of information as to the business and financial standing and credit of persons engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.
5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor and of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.
6. Any person making any investigation for any person engaged in the business of transporting persons or property in interstate commerce.
7. Any adjuster or investigator representing an insurance company.
8. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.
8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire cause and origin inspections, technical surveillance counter measures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.
9. Persons reporting for any media, including news reporters or news investigators.
10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.

SECTION 3. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Fair housing law compliance - Exception - Penalty. This chapter does not apply to a person testing for fair housing law compliance who is employed by or volunteers with an organization recognized for this purpose under federal or state law and who meets the requirements, except for actual registration, of a registered private investigator established by the board. These requirements include a state and nationwide criminal history background check conducted by the bureau of

criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background check must be on file with the organization. The board, at its request, may review the criminal history background check and other information related to any person conducting the compliance test. Any person who knowingly violates the requirements for an exception under this section is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Section 43-30-03 of the North Dakota Century Code is amended and reenacted as follows:

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board must consist of not less than five nor more than eleven members appointed for staggered four-year terms. Appointees to the board must be knowledgeable in private investigative or private security matters. A majority of the members of the board must be actively engaged in the private investigative or security profession, with at least one member actively engaged in law enforcement. Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 368

HOUSE BILL NO. 1161

(Government and Veterans Affairs Committee)
(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE SERVICES

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to citations for unlicensed provision of private investigative services or unlicensed private security services; to amend and reenact sections 43-30-10 and 43-30-12 of the North Dakota Century Code, relating to disciplinary measures for persons engaged in private investigative service or private security service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-10 of the North Dakota Century Code is amended and reenacted as follows:

43-30-10. Penalty - Injunction - Unlicensed activity. Any person who violates this chapter or rules adopted under this chapter, or any person who provides a private investigative service or private security service without a current license issued by the board, or 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. An injunction does not preclude criminal prosecution and punishment of a violator. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 2 of this Act if the person has violated a provision of chapter 43-30.

SECTION 2. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Issuance of citations for unauthorized practice - Administrative fee - Appeal.

1. The board may issue a citation to a person who the board finds probable cause to believe has violated section 43-30-10.
2. A citation must be in writing and describe with particularity the nature of the violation. The citation must also inform the person of the provisions of subsection 5. A separate citation must be issued for each violation.
3. If appropriate, the citation must contain an order of abatement fixing a reasonable time for abatement of the violation.
4. The board may assess an administrative fee of:

- a. For the first violation, up to two hundred fifty dollars.
 - b. For the second violation, up to five hundred dollars.
 - c. For the third or subsequent violation, up to one thousand dollars.
5. To appeal the finding of a violation, the person must request a hearing by written notice of appeal to the board within thirty days after the date of issuance of the citation.
6. An appeal must be heard under the procedures contained in chapter 28-32.
7. A citation does not preclude a civil injunction or the criminal prosecution and punishment of a violator.

SECTION 3. AMENDMENT. Section 43-30-12 of the North Dakota Century Code is amended and reenacted as follows:

43-30-12. Disciplinary action. The board may refuse to renew, suspend, 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.
5. Any person licensed, certified, or registered by the board pursuant to this chapter who violates any statute or board regulation and who is not criminally prosecuted is subject to a monetary penalty, which may be assessed at a hearing under the procedures contained in chapter 28-32. If the board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which may not exceed two thousand five hundred dollars for each violation. The penalty may be sued for and recovered in the name of the board. The monetary penalty must be paid into the board's general fund.

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.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 369

HOUSE BILL NO. 1439

(Representatives Wrangham, DeKrey, Weisz)
(Senators Klein, J. Lee, Wardner)

INDUSTRIAL-ORGANIZATIONAL PSYCHOLOGIST LICENSING

AN ACT to amend and reenact sections 43-32-01, 43-32-03, 43-32-07, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-12, 43-32-13, 43-32-14, 43-32-17, 43-32-19, 43-32-20, 43-32-20.1, 43-32-23, 43-32-25, 43-32-26, 43-32-27, 43-32-27.1, 43-32-30, and 43-32-32 of the North Dakota Century Code, relating to North Dakota state board of psychologist examiners licensure of industrial-organizational psychologists; to provide a penalty; and to provide an effective date.

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. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
3. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.
4. "Licensee" means an industrial-organizational psychologist or a psychologist.
5. "Practice of psychology" means the observation, description, evaluation, interpretation, 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 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 providing psychological services to individuals, families, groups, and the public regardless of whether payment is received for services rendered.

- 3- 6. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.
- 4- 7. "Psychology resident" means an individual who has received from ~~an accredited~~ a school or college a doctorate degree in a program of study substantially psychological in nature, and who is involved in supervised psychological employment.
- 5- 8. "School or college" means any university or other institution of higher learning ~~that~~ which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology or psychology.

SECTION 2. 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. The term of office of each member of the board is three years and until a successor is appointed and qualified. The governor shall fill all vacancies by appointment. In case of a vacancy before the expiration of a term, the appointment must be for the remainder of the term only. ~~A person~~ An individual appointed to the board qualifies by taking the oath required of civil officers.

SECTION 3. AMENDMENT. Section 43-32-07 of the North Dakota Century Code is amended and reenacted as follows:

43-32-07. Meetings of board - Seal of board. The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the president or at the written request of the governor or of any two members of the board. The meetings must be held at such places as the board may designate. The board ~~shall~~ must have a seal.

SECTION 4. AMENDMENT. Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08. Rules and regulations. The board may; ~~from time to time,~~ adopt ~~such rules and regulations not inconsistent with law,~~ as ~~may be~~ necessary to enable ~~it~~ the board to carry into effect the provisions of this chapter, ~~which.~~ The rules may include a code of ethics for ~~psychologists in the state~~ licensees. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

SECTION 5. 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 licensees~~. 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 6. AMENDMENT. Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.2. 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~~ under section 43-32-08.1 have been met. A ~~person~~ An individual 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~~ individual demonstrates to the secretary of the board the continuing education requirements have been satisfied ~~and~~, pays the renewal fee, and pays a late fee to be determined by rule of the board.

SECTION 7. AMENDMENT. Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and license fee. The board shall adopt rules establishing the amount of the application fee for ~~licensing~~ licensure by written and oral examination and by reciprocity ~~must be determined by regulation of the board~~. ~~No~~ A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

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. Before January first of each year, every ~~licensed psychologist in the state~~ licensee shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred dollars. The secretary of the board, upon receipt of payment of the annual license fee ~~by a person licensed under this chapter~~, shall issue the licensee a certificate of annual license. A ~~person~~ An individual may not hold out as an industrial-organizational psychologist or a ~~licensed~~ psychologist until the annual license fee is paid. The board may deny renewal of the license of a ~~person~~ an individual who violates this section. Annually, the board shall mail a renewal notice to ~~all licensed psychologists~~ each licensee 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. A ~~person who has been a licensed psychologist in this state~~ An individual whose license issued under this chapter and whose license has been was revoked for failure to pay the annual license fee must be reinstated and the license renewed if, within one year from the date of revocation, the ~~person~~ individual pays to the secretary of the board the amount of the annual license fees in default and a late fee in the amount of twenty dollars.

SECTION 10. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

43-32-17. License required for practice - Titles.

1. Except as otherwise provided by under this chapter, no individual a person may not engage in the practice of psychology or represent that individual person to be a psychologist in this state after August 1, 1993, unless that person is an individual has obtained from the board a license to do so who is licensed as a psychologist under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology or represent that person to be an industrial-organizational psychologist in this state unless that person is an individual who is licensed as a psychologist or an industrial-organizational psychologist under this chapter.
2. A psychologist may use the title "psychologist" or similar title in conjunction with the practice of psychology. An industrial-organizational psychologist may use the title "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" in conjunction with the practice of industrial-organizational psychology. An industrial-organizational psychologist may not use the title "psychologist" or similar title representing that the individual is licensed as a psychologist.

SECTION 11. AMENDMENT. Section 43-32-19 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19. Licensing of psychologists applicants from other states.

Upon receipt of an application accompanied by the required fee, the board, ~~without written or oral examination,~~ may issue a license to any ~~person~~ individual who at the time of application furnishes evidence satisfactory to the board that the applicant is licensed or certified as a psychologist or industrial-organizational psychologist by a similar board of another state ~~whose the~~ standards, in the opinion of which the board, determines are not lower than those required ~~by under~~ this chapter.

SECTION 12. 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 to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and demonstrates to the board that the applicant: meets the requirements of subsection 1 or 2.

1. An applicant for licensure as a psychologist shall demonstrate the applicant:
 - a. 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- b. Has received from an accredited school or college as defined by this chapter a doctorate degree in a program of studies substantially psychological in nature.

- 3- c. Has passed the examinations, written ~~or~~, oral, or both, as the board ~~dems~~ determines necessary.
- 4- d. Has 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.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate the applicant:
- a. 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.
- b. Has received from a school or college a doctorate degree in a program of studies substantially psychological in nature.
- c. Has passed the examinations, written, oral, or both, as the board determines necessary.
- d. Has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
- (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.
- (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.

SECTION 13. AMENDMENT. Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20.1. Postdoctoral supervised psychological employment.

- 4- This section applies to postdoctoral supervised psychological employment. 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 psychologist 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~~ during which the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for ~~persons~~ individuals preparing for licensure on a part-time basis.

3. The board may adopt rules regarding postdoctoral psychology supervision requirements and reporting.

SECTION 14. AMENDMENT. Section 43-32-23 of the North Dakota Century Code is amended and reenacted as follows:

43-32-23. Scope and grading of examination. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Written examinations may be supplemented by ~~such~~ oral examinations as the board may determine necessary. The board shall determine an acceptable level of performance for each examination and a majority decision of the board is required for the issuing of a license. ~~To ensure impartiality, the written examination must be identified by numbers and no paper may be marked in the name of any applicant, but must be anonymously graded by the board.~~

SECTION 15. AMENDMENT. Section 43-32-25 of the North Dakota Century Code is amended and reenacted as follows:

43-32-25. Retention of examination records. The board shall keep the written examination ~~papers and score report~~, an accurate recording of the questions and answers relating to the oral examinations, and the grade assigned to each answer thereof as a part of ~~its~~ the board's records for at least two years ~~subsequent to following~~ the date of the examination. In addition, the board shall keep a permanent record of all written examination score reports.

SECTION 16. AMENDMENT. Section 43-32-26 of the North Dakota Century Code is amended and reenacted as follows:

43-32-26. Issuance and display of license. The board is the sole agency empowered to examine competence in the practice of psychology. ~~Such~~ A license certificate issued by the board must show the full name of the licensee, have a serial number and be signed by the president of the board, and be attested by the secretary under the board's adopted seal. The license issued by the board under ~~the provisions of this chapter~~ must be prominently displayed at the principal place of business ~~where at which the psychologist licensee practices.~~

SECTION 17. 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~~ and hearing, and by an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any ~~psychologist~~ license issued or applied for under this chapter, ~~or and may~~ otherwise discipline a licensed psychologist, licensee or an applicant upon proof the applicant or ~~licensed psychologist licensee~~.
- a. Has been convicted of an offense determined by the board to have a direct bearing upon ~~a person's~~ an individual's ability to serve the public as a psychologist or industrial-organizational psychologist, ~~or when~~ if the board finds, after the conviction of any offense, that ~~a person~~ a person an individual is not sufficiently rehabilitated under section 12.1-33-02.1.

- b. Is using any narcotic or alcoholic beverage to an extent or in a manner dangerous to the psychologist applicant or licensee, any other person, or the public, or to an extent that the use impairs the psychologist's applicant's or licensee's ability to perform the work of a professional psychologist practice of psychology or industrial-organizational psychology with safety to the public.
 - c. Has impersonated another person individual holding a psychology or industrial-organizational psychology license or allowed another person to use the psychologist's licensee's license.
 - d. Has used fraud or deception in applying for a license or in taking an examination under this chapter.
 - e. Has allowed the psychologist's licensee's name or license issued under this chapter to be used in connection with any person who performs psychological services outside of the area of that person's training, experience, or competence.
 - f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
 - g. Has engaged in any form of unethical conduct as defined in ethical principles of psychologists and code of conduct as adopted and published by the American psychological association, 1992, or revised editions if adopted by the board by rule.
 - h. Has become grossly negligent in the practice of the profession psychology or industrial-organizational psychology.
 - i. Has willfully or negligently violated this chapter.
 - j. Has engaged in an act in violation of rules adopted by the board.
2. A person An individual whose license has been revoked under this section may reapply for licensing licensure after two years have elapsed from the date of revocation.

SECTION 18. AMENDMENT. Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27.1. Complaints - Investigations.

1. A person aggrieved by the actions of a psychologist licensed under this chapter licensee may file a written complaint with the board citing the specific allegations of misconduct by the psychologist licensee. The board shall notify the psychologist licensee of the complaint and request a written response from the psychologist licensee.
2. The board may investigate a complaint on ~~its~~ the board's 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 licensee 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 or client records ~~when~~ if 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 and client records, and may copy, photograph, or take samples of the records. The board may require the licensed psychologist licensee 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 and client records released to the board are not public records.
5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in ~~its~~ the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If ~~no~~ patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

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 this chapter. This chapter does not apply to:

1. Any ~~person~~ individual 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~~ individual 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, 2001. 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~~ individual affected has received from a school or college a master's degree in psychology and the ~~person's~~ individual'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 pursuing a course of study in psychology or industrial-organizational psychology at a school or college, if the activities and services are a part of the ~~person's~~ individual's supervised course of study, provided the student or intern does not use the title "psychologist" or "industrial-organizational psychologist" and the student or intern status is clearly stated.

3. A nonresident licensed or certified in the state of the ~~person's~~ individual's residence who does not practice psychology or industrial-organizational 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 or industrial-organizational psychology unless the lecturer is licensed ~~to practice psychology in this state under this chapter.~~
5. A ~~person~~ An individual employed by a public school ~~and whose if that individual's~~ activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only ~~when~~ if the ~~person~~ individual 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 certified, licensed, or registered in this state in another health care profession, ~~whose the scope of practice of which is~~ consistent with the accepted standards of that person's profession ~~and who does.~~ A person claiming an exemption under this subsection may not represent to be rendering psychological services.
7. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, 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, a nonprofit corporation, or an institution ~~who if that person is~~ currently exempt from licensure. A person exempt under this subsection 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~~ psychology resident performing services supervised as provided under section 43-32-20.1.

SECTION 20. AMENDMENT. Section 43-32-32 of the North Dakota Century Code is amended and reenacted as follows:

43-32-32. Drugs - Medicine. ~~Nothing in this~~ This chapter may not be construed as permitting ~~psychologists licensed under this chapter~~ a licensee to administer or prescribe drugs, or in any manner engage in the practice of medicine as defined by the laws of this state.

SECTION 21. EFFECTIVE DATE. Section 10 of this Act becomes effective on January 1, 2006.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 370

HOUSE BILL NO. 1212

(Representatives Delmore, Hawken, N. Johnson, R. Kelsch, S. Meyer)
(Senator Nelson)

SOCIAL WORK BOARD COMPLAINTS

AN ACT to amend and reenact section 43-41-11 of the North Dakota Century Code, relating to groundless complaints made to the board of social work examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-41-11 of the North Dakota Century Code is amended and reenacted as follows:

43-41-11. Hearings and disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under section 43-41-10, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
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 anonymity of the complainant.
3. If the investigation reveals no grounds to support the complaint, the board, three years following the date on which the complaint was filed, shall expunge the complaint from the social worker's individual record in the board's office.
4. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.
4. 5. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations must be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
5. 6. The board may at any time enter into an informal resolution to resolve the complaint or disciplinary action.

- ~~6-~~ 7. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-42.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 371

HOUSE BILL NO. 1280

(Representatives Porter, Grande, Keiser)
(Senators Andrist, Brown, Kilzer)

POLYSOMNOGRAPHIC TECHNOLOGIST LICENSURE

AN ACT to create and enact a new section to chapter 43-42 of the North Dakota Century Code, relating to licensure of polysomnographic technologists; to amend and reenact section 43-42-01, subsection 2 of section 43-42-02, and section 43-42-03 of the North Dakota Century Code, relating to licensure of registered polysomnographic technologists; to provide for a legislative council study; 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 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

43-42-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the commission on accreditation of allied health educational programs, or the commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory therapists administered by the national board for respiratory care.
4. "Certified respiratory therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Polysomnography" means the practice of attending, monitoring, and recording physiologic data during sleep for the purpose of identifying and assisting in the treatment of sleep-wake disorders.
7. "Registered polysomnographic technologist" means an individual licensed by the board to practice polysomnography under supervision as prescribed by the board by rule.
8. "Registered respiratory therapist" means a person licensed by the board to practice respiratory care.

- ~~7.~~ 9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
- ~~8.~~ 10. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.
- ~~9.~~ 11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
- ~~40.~~ 12. "Respiratory therapy" means respiratory care.
- ~~44.~~ 13. "Temporary respiratory therapist" means any individual who has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory therapist, or registered respiratory therapist.

¹⁸¹ **SECTION 2. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of ~~seven~~ eight members appointed by the governor. Four members must be respiratory therapists, chosen from a list of eight respiratory therapists supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. One member must be a registered polysomnographic technologist chosen from a list of candidates recommended to the governor by the association of polysomnographic technologists. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

¹⁸¹ Section 43-42-02 was also amended by section 3 of House Bill No. 1280, chapter 371.

¹⁸² **SECTION 3. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of seven members appointed by the governor. Four members must be respiratory therapists, chosen from a list of eight respiratory therapists supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint ~~two members~~ one member to be ~~representatives~~ a representative of the general public. One member must be a registered polysomnographic technologist chosen from a list of candidates recommended to the governor by the association of polysomnographic technologists. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

SECTION 4. AMENDMENT. Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory therapist and polysomnographic technologist licensing - Fees.

1. The board shall license as a registered respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of one hundred dollars for the issuance and renewal of a registered respiratory therapist license.
2. The board shall license as a certified respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of seventy dollars for the issuance and renewal of a certified respiratory therapist license.
3. The board shall license as a temporary respiratory therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of seventy dollars for the issuance of a temporary respiratory therapist license.

¹⁸² Section 43-42-02 was also amended by section 2 of House Bill No. 1280, chapter 371.

4. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 5 of this Act. The board shall establish fees not in excess of seventy dollars for issuance and for renewal of a registered polysomnographic technologist license.
5. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
- ~~5.~~ 6. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:
 - a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, ~~or a~~ temporary respiratory therapist, or a registered polysomnographic technologist.
 - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, ~~or a~~ temporary respiratory therapist, or registered polysomnographic technologist.
 - d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, ~~or a~~ temporary respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
 - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
- ~~6.~~ 7. 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, which are not reversed on appeal, 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.

7. 8. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. Temporary licenses may not be renewed.
8. 9. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 5. A new section to chapter 43-42 of the North Dakota Century Code is created and enacted as follows:

Polysomnography practice.

1. After December 31, 2005, a person may not practice, nor represent that the person is able to practice, polysomnography unless licensed under this chapter as a registered polysomnographic technologist. A registered polysomnographic technologist may not practice respiratory care except as may be authorized by rules adopted by the board. A registered polysomnographic technologist is limited in practice to polysomnography within the scope of practice and limitations as provided by rules adopted by the board.
2. The board shall adopt rules regulating registered polysomnographic technologists and establishing the scope of practice of a registered polysomnographic technologist. The rules may include requirements for examination requirements for licensure, education requirements for licensure, continuing courses of study in polysomnography, and student practice.
3. This section does not prohibit a respiratory therapist from practicing respiratory care.

SECTION 6. ALLIED HEALTH PROFESSIONS BOARD - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions. The study must include consideration of the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act becomes effective on October 1, 2006.

SECTION 8. EXPIRATION DATE. Section 2 of this Act is effective through September 30, 2006, and after that date is ineffective.

SECTION 9. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 372

SENATE BILL NO. 2388

(Senators G. Lee, Brown, Kilzer)

(Representative Porter)

RESPIRATORY THERAPY PRACTICE

AN ACT to create and enact a new subsection to section 43-42-05 and a new section to chapter 43-51 of the North Dakota Century Code, relating to reciprocity for the practice of respiratory therapy and for foreign practitioners in emergency situations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-42-05 of the North Dakota Century Code is created and enacted as follows:

This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

SECTION 2. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Foreign practitioners - Emergency practice exemption. Notwithstanding contrary provisions of law, a foreign practitioner may practice in an emergency in this state, practice as a member of an organ harvesting team, or practice on board an ambulance as part of the ambulance treatment team.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 373

SENATE BILL NO. 2073

(Human Services Committee)

(At the request of the Board of Clinical Laboratory Practice)

CLINICAL LABORATORY PERSONNEL LICENSURE

AN ACT to create and enact a new subsection to section 43-48-03 of the North Dakota Century Code, relating to exemptions from clinical laboratory personnel licensures; and to amend and reenact subsection 6 of section 43-48-03 of the North Dakota Century Code, relating to clinical laboratory personnel licensure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸³ **SECTION 1. AMENDMENT.** Subsection 6 of section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

6. Phlebotomy personnel performing phlebotomy procedures ~~and bedside screening tests.~~

¹⁸⁴ **SECTION 2.** A new subsection to section 43-48-03 of the North Dakota Century Code is created and enacted as follows:

An individual supervised by an individual who is licensed by the board and who performs tests and uses methods identified by rules adopted by the board.

Approved April 4, 2005
Filed April 4, 2005

¹⁸³ Section 43-48-03 was also amended by section 2 of Senate Bill No. 2073, chapter 373.

¹⁸⁴ Section 43-48-03 was also amended by section 1 of Senate Bill No. 2073, chapter 373.

CHAPTER 374

HOUSE BILL NO. 1527

(Representatives DeKrey, Horter, Price)

(Senators J. Lee, Traynor, Triplett)

(Approved by the Delayed Bills Committee)

MILITARY EXCEPTION FOR OCCUPATIONAL CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-51 of the North Dakota Century Code, relating to military service member exceptions to occupational licensing board license renewal requirements; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Members of military - License renewal.

1. A board shall adopt rules to provide for or shall grant on a case-by-case basis exceptions to the board's license renewal requirements in order to address renewal compliance hardships that may result from:
 - a. Activation of more than thirty days of a licensee who is a member of the national guard or armed forces of the United States.
 - b. Service in the theatre or area of armed conflict by a licensee who is a member of the regular active duty armed forces of the United States.
2. For purposes of this section, the term board includes the state board of accountancy, state electrical board, North Dakota real estate appraiser qualifications and ethics board, state real estate commission, secretary of state with respect to contractor licensing, state board of medical examiners, and state board of dental examiners.

SECTION 2. APPLICATION. A board shall make a case-by-case exception determination under section 1 of this Act which applies to a licensure renewal that preceded the effective date of this Act.

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

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 375

SENATE BILL NO. 2269

(Senators Grindberg, Erbele, Flakoll)
(Representatives Hawken, N. Johnson, Potter)

MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

AN ACT to create and enact chapter 43-53 of the North Dakota Century Code, relating to creation of the North Dakota marriage and family therapy licensure board; to provide a penalty; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 43-53 of the North Dakota Century Code is created and enacted as follows:

43-53-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Advertise" includes the issuing or causing to be distributed any card, sign, or device to any person; the causing, permitting, or allowing any sign or marking in or on any building, radio, or television; or advertising by any other means designed to secure public attention.
2. "Board" means the North Dakota marriage and family therapy licensure board.
3. "Licensed marriage and family therapist" means an individual who holds a valid license issued under this chapter.
4. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders.
5. "Practice of marriage and family therapy" means the rendering of marriage and family therapy services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.
6. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor.
7. "Recognized educational institution" means any educational institution that grants a baccalaureate or higher degree that is recognized by the board and by a regional accrediting body, or a postgraduate training

institute accredited by the commission on accreditation for marriage and family therapy education.

8. "Use a title or description of" means to hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, calling cards, or other instruments of professional identification.

43-53-02. Representation to the public. Effective January 1, 2006, except as specifically provided otherwise under this chapter, only an individual licensed under this chapter may use the title "marriage and family therapist" or the abbreviations "MFT". A licensee shall display prominently the licensee's license at the principal place of business of the licensee.

43-53-03. Exemptions.

1. An individual is exempt from the requirements of this chapter if:
 - a. The individual is practicing marriage and family therapy as part of that individual's duties as an employee of a recognized academic institution or a governmental institution or agency while performing those duties for which the individual is employed by such a facility, institution, or agency.
 - b. The individual is a marriage and family therapy intern or individual preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the board if:
 - (1) The individual is a student in a master's program of marriage and family therapy; and
 - (2) The individual is designated by a title such as "marriage and family therapy intern", "marriage therapy intern", "family therapy intern", or other title clearly indicating such training status.
 - c. The individual is a member of the clergy of any religious denomination and providing services within the scope of ministerial duties.
 - d. The individual is a volunteer for or is employed by a nonprofit agency or community organization and the individual does not hold out to the public that the individual is a licensed marriage and family therapist.
2. This chapter does not prevent any person licensed by the state from doing work within the standards and scope of practice of that person's profession, including the practice and advertising of marriage and family therapy services.

43-53-04. Marriage and family therapist licensure board.

1. The North Dakota marriage and family therapist licensure board consists of five members. The governor shall appoint the board members to serve terms of four years, except for those first appointed

one member must continue in office for two years, two for three years, and two, including the chairman, for four years.

2. The governor shall appoint members of the board from among individuals who meet the following qualifications:
 - a. At least three members must be licensed practicing marriage and family therapists; and each must have been for at least five years immediately preceding appointment actively engaged as marriage and family therapists in rendering professional services in marriage and family therapy; in the education and training of master's, doctoral, or postdoctoral students of marriage and family therapy; or in marriage and family therapy research. A member under this subdivision must have spent the majority of the time devoted by that member to such activity during the two years preceding appointment residing in this state.
 - b. At least one member must be a representative of the general public and may not have any direct affiliation with the practice of marriage and family therapy or another mental health profession.
 - c. The initial appointees, with the exception of any representative of the general public, are deemed to be and become licensed practicing marriage and family therapists immediately upon appointment and qualification as members of the board.
3. The governor shall nominate a new member to fill a vacancy on the board within thirty days of the vacancy. A member chosen to fill a board vacancy must be appointed for the unexpired term of the board member whom that member is succeeding. Upon the expiration of a member's term of office, a board member shall continue to serve until a successor is appointed. An individual may not be appointed more than once to fill an unexpired term or appointed to more than two consecutive full terms. A member may not serve as chairman for more than four years. The appointment of any member of the board automatically terminates thirty days after the date the member is no longer a resident of this state.
4. The governor may remove any member of the board or the chairman from the position as chairman for neglect of duty or malfeasance or conviction of a felony or crime of moral turpitude while in office, but for no other reason. A member may not be removed until after a hearing on the charges and at least thirty days' prior written notice to such accused member of the charges and of the date fixed for such hearing.
5. A board member may not participate in any matter before the board in which that member has a pecuniary interest, personal bias, or other similar conflict of interest. A board member shall serve without compensation but is entitled to be reimbursed for the member's actual and necessary expenses incurred in the performance of official board business.

43-53-05. Board powers and duties.

1. The board shall administer and enforce this chapter. The board shall adopt rules as the board determines necessary.

2. The board shall examine and pass on the qualifications of all applicants and shall issue a license to each successful applicant. The board shall adopt a seal which must be affixed to all licenses issued by the board.
3. The board may authorize expenditures determined necessary to carry out this chapter.
4. Four of the members of the board constitute a quorum. The board may employ attorneys, experts, and other employees as necessary for the proper performance of the board's duties.
5. The board shall adopt a nationally recognized code of ethics for the practice of marriage and family therapy.
6. The board shall establish continuing education requirements for license renewal.
7. The board shall publish an annual list of the names and addresses of all individuals licensed under this chapter.

43-53-06. Licenses.

1. Each individual desiring to obtain a license as a practicing marriage and family therapist shall submit an application to the board, upon such form and in such manner as the board prescribes. An applicant shall furnish evidence that the applicant:
 - a. Is of good moral character;
 - b. Has not engaged in any practice or conduct that would be a ground for revoking a license under this chapter; and
 - c. Is qualified for licensure pursuant to the requirements of this chapter.
2. Before January 1, 2008, an applicant may be issued a license by the board if the applicant meets the qualifications set forth in subdivisions a and b of subsection 1 and provides evidence to the board that the applicant meets educational and experience qualifications as follows:
 - a. An appropriate graduate degree, as defined by the board, from a regionally accredited institution so recognized at the time of granting such degree.
 - b. At least five years of clinical experience in the practice of marriage and family therapy, and membership or certification by an appropriate professional organization, as defined by the board.
3. After December 31, 2007, an applicant may be issued a license by the board if the applicant meets the qualifications set forth in subsection 1 and provides satisfactory evidence to the board that the applicant:
 - a. Holds a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a

master's degree in marriage and family therapy, as determined by the board.

- b. Has successfully completed two calendar years of work experience in marriage and family therapy under qualified supervision following receipt of a qualifying degree.
- c. Has passed a national examination administered by the board.

43-53-07. Examination.

1. The board shall conduct an examination at least once a year at a time and place designated by the board. Examinations may be written or oral as determined by the board. In any written examination each applicant must be designated so that the applicant's name is not disclosed to the board until the examination has been graded. Examinations must include questions in such theoretical and applied fields as the board determines most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. An applicant is deemed to have passed an examination upon affirmative vote of at least four members of the board.
2. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

43-53-08. Reciprocal licenses. The board shall issue a license by examination of credentials to any applicant licensed or certified as a marriage and family therapist in another state for which the requirements for the license or certificate are equivalent to or exceed the requirements of this state, provided the applicant submits an application on forms prescribed by the board and pays the original licensure fee prescribed by this chapter.

43-53-09. Fees. A fee, as determined by the board, must be paid to the board for original licensure. A license is valid for two years and must be renewed biennially, with the renewal fee being determined by the board. Any applicant for renewal of a license that has expired must be required to pay a reregistration fee determined by the board. The fees established under this section must be adequate to establish and maintain the operation of the board.

43-53-10. Disciplinary proceedings.

1. The board may deny, revoke, or suspend a license granted under this chapter on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense that the board determines to be of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall compile, maintain, and publish a list of such offenses.
 - b. Violation of ethical standards of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall publish such ethical standards.
 - c. Fraud or misrepresentation in obtaining a license.

- d. Any just and sufficient cause that renders a licensee unfit to practice marriage and family therapy.
2. A license may be denied, suspended, or revoked for the reasons set forth in subsection 1. A license may not be denied, suspended, or revoked under this section except by majority vote of the full board, notwithstanding any other provision of this chapter.
3. Any person may file a complaint with the board seeking denial, suspension, or revocation of a license issued or to be issued by the board. The complaint must be in a form prescribed by the board and must be verified under oath by the complainant or a duly authorized officer of a complainant. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a license, the board promptly shall institute a hearing. If the board determines a complaint does not state facts warranting a hearing, the complaint may be dismissed. The board may institute a hearing for denial, suspension, or revocation of a license on its own motion.
4. Any person may be permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses upon a showing of an interest in such proceeding.
5. Any individual whose license has been suspended or revoked may apply to the board for vacation of the suspension or reinstatement of the license.

43-53-11. Limitations of practice - Divorce proceedings.

1. If both parties to a marriage have obtained marriage and family therapy by a licensed marriage and family therapist, the therapist may not testify in a spousal support or divorce action concerning information acquired in the course of the therapeutic relationship. This subsection does not apply to custody actions.
2. There is no monetary liability on the part of and no cause of action may arise against any licensee in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except if the patient has communicated to the licensee a serious threat of physical violence against a reasonably identifiable victim or victims.
3. The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified under subsection 2. The duty is discharged by the licensee if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.
4. No monetary liability and no cause of action may arise under this chapter against any licensee for confidences disclosed to third parties in an effort to discharge a duty arising under subsection 2 according to subsection 3.

43-53-12. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 376

HOUSE BILL NO. 1507

(Representatives Sitte, Keiser, Martinson)
(Senator Kringstad)

HOME INSPECTOR REGISTRATION

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the registering of home inspectors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Client" means a person that engages or seeks to engage the services of a home inspector for a home inspection.
2. "Home inspection" means the process by which a home inspector provides a nonintrusive, visual examination and written evaluation of the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, and exterior and interior components of a residential building. The term does not include an examination of items that are concealed or not readily accessible or identification of concealed conditions or defects.
3. "Home inspector" means an individual registered under this chapter to conduct home inspections.
4. "Registrar" means the secretary of state.
5. "Residential building" means a structure consisting of not more than four family dwelling units.

Home inspector registration required - Penalty. The registrar shall issue and renew registrations to home inspectors pursuant to this chapter. An individual may not perform a home inspection for compensation unless registered under this chapter. An individual who violates this chapter is guilty of a class B misdemeanor.

Registering of home inspectors. An applicant for a registration as a home inspector shall file a written application in the form prescribed by the registrar. An applicant:

1. Must be at least eighteen years of age;
2. Shall submit proof of satisfactory completion of an examination on home inspection offered by the American society of home inspectors, the national association of home inspectors, the national association of certified home inspectors, the examination board of professional home inspectors, or the international code council;

3. Shall submit proof of current errors and omissions insurance coverage in an amount of one hundred thousand dollars or more covering all home inspection activities; and
4. Shall pay a fee of two hundred dollars.

Exceptions to registration requirements. The registration requirements of this chapter do not apply to:

1. An individual employed as a code enforcement official by the state or a political subdivision when acting within the scope of that employment.
2. An individual licensed, certified, or registered under this title when acting within the scope of practice of that individual's profession or occupation.
3. An individual engaged as an insurance adjuster when acting within the scope of that engagement.

Renewal of registration. A registration issued under this chapter expires June thirtieth of each calendar year and may be renewed upon submission of a renewal fee of fifty dollars and provision of proof of continuous insurance coverage as required for registration. The application for renewal must be postmarked before July first of each year. The registrar shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. The cancellation must be without notice or opportunity for hearing. An individual whose registration has been canceled and who desires to reregister must file an initial application, pay the initial application fee, and provide proof of current errors and omissions insurance. An individual registered under this chapter may not engage in any activity under this chapter after June thirtieth of any year unless that individual has a valid registration.

Approved April 14, 2005
Filed April 18, 2005

OFFICES AND OFFICERS

CHAPTER 377

HOUSE BILL NO. 1286

(Representatives Devlin, Froseth, Glassheim)
(Senators Andrist, Trenbeath, Triplett)

RECORDS DISCLOSURE, COPIES, AND VIOLATIONS

AN ACT to create and enact a new subsection to section 44-04-18.10 and a new subsection to section 44-04-19.2 of the North Dakota Century Code, relating to the release of confidential records disclosed to another entity and the sequestering of competitors in a competitive selection or hiring process; and to amend and reenact subsection 2 of section 28-32-33, subsection 6 of section 39-08-13, subsection 8 of section 44-04-17.1, section 44-04-18, subsection 2 of section 44-04-18.1, sections 44-04-18.4, 44-04-18.12, and 44-04-19.1, subsections 5 and 6 of section 44-04-20, and section 44-04-21.1 of the North Dakota Century Code, relating to discovery in adjudicative proceedings, providing copies of records, fees for copies, release of bidding records, litigation and investigatory records, meeting notices, and violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-33 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

¹⁸⁵ **SECTION 2. AMENDMENT.** Subsection 6 of section 39-08-13 of the North Dakota Century Code is amended and reenacted as follows:

6. Upon request of any person and upon payment of a fee of two dollars, the director or the law enforcement agency may furnish to a requestor a copy of that portion of an investigating officer's accident report which does not disclose the opinion of the reporting officer, if the report shows that the accident is one for which a driver is required to file a report under section 39-08-09.

¹⁸⁵ Section 39-08-13 was also amended by section 1 of House Bill No. 1098, chapter 334.

SECTION 3. AMENDMENT. Subsection 8 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

8. a. "Meeting" means a formal or informal gathering, whether in person or through ~~other~~ electronic 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.

SECTION 4. AMENDMENT. Section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise specifically provided by law, all records of a public 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 44-04-17.1, 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. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public

entity of making the copy, including labor, materials, and equipment. The entity may charge a reasonable fee for making or mailing the copy, or both for the actual cost of postage to mail a copy of a record. An entity may require payment before making or mailing the copy, or both. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under 44-04-18.10. 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 excising confidential or closed material under section 44-04-18.10. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. Access to electronically stored records is free if the records are recoverable without the use of a computer backup. If a request is made for access to a record on a backup, or for a copy of an electronically stored record, in addition to the charge in this section, the public entity may charge a reasonable fee for providing the copies, including costs attributable to the use of information technology resources.
4. 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. 5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 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-~~ 6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or adversarial administrative proceeding in which the public entity is a party, 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 adversarial administrative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
- ~~6-~~ 7. 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-~~ 8. 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 or when a fee is charged in excess of the amount authorized in subsection 2.
- ~~8-~~ 9. 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 an 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.
10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good faith review, that all substantive work on it has been completed.
- ~~9-~~ 11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

SECTION 5. AMENDMENT. Subsection 2 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

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; payroll deduction information; the name, address, telephone number, and date of birth 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.

SECTION 6. AMENDMENT. Section 44-04-18.4 of 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 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 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 by the public entity which an employee or the 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. 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.

6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until such time all of the proposals have been received and opened by the public entity or until such time that all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal shall be open.

SECTION 7. A new subsection to section 44-04-18.10 of the North Dakota Century Code is created and enacted as follows:

Confidential records that are authorized by law to be disclosed to another entity continue to be confidential in the possession of the receiving entity, except as otherwise provided by law.

SECTION 8. AMENDMENT. Section 44-04-18.12 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.12. Cooperative investigations and litigation. A record acquired under an agreement between or involving by the office of attorney general from a governmental agency in another jurisdiction and the attorney general or a nonpublic entity is confidential, except for the purposes specified in the agreement, exempt if the attorney general determines:

1. The record is necessary to monitor or enforce compliance with a law or order or 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 or privileged by the provider of the records; and
3. The provider of the records has not agreed to waive the privilege relating to or confidentiality of the record.

SECTION 9. AMENDMENT. Section 44-04-19.1 of 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, 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 entity receiving such work product.

2. Attorney consultation is exempt from section 44-04-19. That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section 44-04-19.2.
3. Active investigatory work product is exempt from section 44-04-18.
4. "Attorney work product" means any document or record that:
 - a. Was prepared by an attorney representing a public 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 entity; and
 - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of reasonably predictable civil or criminal litigation or adversarial administrative proceedings.
4. 5. "Attorney consultation" means any discussion between a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of 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.
6. "Investigatory work product" means records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law or an order. Investigatory work product must be considered active as long as it is related to monitoring or enforcement activity conducted with a reasonable good-faith belief that it will lead to enforcement of the law or an order.
5. 7. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency or institution of higher education acts as a complainant, 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.
6. 8. 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 entity, unless another exception to section 44-04-18 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, or the attorney work product reflects mental impressions, opinions, conclusions, or legal theories regarding potential liability of a public entity.
7. 9. A governing body may hold an executive session under section 44-04-19.2 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- 10. 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 44-04-17.1 regarding matters that do not pertain to public business.

SECTION 10. A new subsection to section 44-04-19.2 of the North Dakota Century Code is created and enacted as follows:

A public entity may sequester all competitors in a competitive selection or hiring process from that portion of a public meeting wherein presentations are heard or interviews are conducted.

SECTION 11. AMENDMENT. Subsections 5 and 6 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

5. The governing body's presiding officer has the responsibility of assuring that such public notice is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information. When a request is made for notice of meetings, the request is effective for one year unless a different time period is specified.
6. In the event of emergency or special meetings of a 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 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 governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

SECTION 12. AMENDMENT. Section 44-04-21.1 of the North Dakota Century Code is amended and reenacted 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, 44-04-19.2, 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, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety 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 44-04-19.2. The attorney general may request and obtain

information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. 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 44-04-17.1, 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 attorney's 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 44-04-17.1 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.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 378**SENATE BILL NO. 2202**

(Senators Wardner, Lyson)
(Representatives Haas, Maragos)

**ECONOMIC ASSISTANCE RECIPIENT RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to exempting from the open records law records concerning individual recipients of economic assistance administered under the division of community services or a community action agency; 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:

Exemption of records relating to individual recipients of economic assistance or benefits. Records concerning individual applicants or recipients of economic assistance or support administered under the division of community services or a community action agency, including benefits or services, are exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. These exempt records include applications, income or eligibility verification, assessments, or other personal, medical, or financial data.

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

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 379

HOUSE BILL NO. 1464

(Representatives Nelson, Belter, Onstad)
(Senators O'Connell, Wardner)

FEEDLOT PERMIT INFORMATION

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to information in feedlot permits.

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:

Animal feeding operation record requests. The state department of health shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. If an individual makes inquiries on more than three files in any one request, the department shall charge the individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a fee for copying the records as allowed under section 44-04-18.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 380

SENATE BILL NO. 2353

(Senator Wardner)
(Representative Vigesaa)

NOTARY REGULATION

AN ACT to amend and reenact sections 44-06-02, 44-06-13, and 44-06-13.1 of the North Dakota Century Code, relating to regulation of notaries public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-02 of the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect ~~twenty-five~~ thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

SECTION 2. 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. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

SECTION 3. AMENDMENT. Section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.

2. The name of the notary public or the spouse of the notary public 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. Except as otherwise provided by law, 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.
5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgment is undated.
6. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
7. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgment or in any other way is impersonating or assuming the identity of another notary.
8. Within five years of the date of issuance of a commission or renewal of a commission, the notary is convicted of a criminal offense which the secretary of state determines has a direct bearing upon the notary's ability to serve the public as a notary public.

A notary public who violates this section is guilty of an infraction and the notary public's commission may be revoked by the secretary of state or the secretary of state may impose a lesser sanction using the procedure under chapter 28-32.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 381

HOUSE BILL NO. 1091

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

BID OPENINGS AND PREFERENCES

AN ACT to amend and reenact section 44-08-01.1 and subsection 4 of section 54-44.4-09 of the North Dakota Century Code, relating to bid opening and preference for tie bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-01.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-01.1. Bids to be sealed - Designation of time and place for opening - Preference for tie bids. Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids, it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase must be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications called for set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

¹⁸⁶ **SECTION 2. AMENDMENT.** Subsection 4 of section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

4. The procurement officer may authorize receipt of a bid or proposal from a vendor that is not on the list of approved vendors if the procurement officer makes a written determination that it is in the best interest of the state to receive the bid or proposal. The successful bidder or offeror must become approved before the award and the existence of this approval requirement must be stated in the solicitation. If an unapproved vendor is selected for award, the vendor's bid or proposal may be rejected if that vendor fails to become approved within sixty days or within a shorter period as specified in writing by the procurement officer. Before issuing a solicitation, the procurement officer may waive the approval requirement if the procurement officer determines, in consultation with the secretary of state, that registration with the secretary of state and appointment of an agent for service of process in this state are not required. The waiver of the approval requirement must be stated in the solicitation. ~~In the event of a tie bid or~~

¹⁸⁶ Section 54-44.4-09 was also amended by section 18 of House Bill No. 1273, chapter 384, and section 2 of House Bill No. 1341, chapter 528.

proposal, the approved vendor must be given that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given pursuant to section 44-08-01.1. If the application of section 44-08-01.1 does not result in the award of a contract, preference must be given to bids submitted by vendors approved under this section.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 382

SENATE BILL NO. 2195

(Senators Krebsbach, Heitkamp, Wardner)
(Representatives Glassheim, D. Johnson, Maragos)

PUBLIC EMPLOYEE LODGING AND MEAL REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to reimbursement of lodging expenses and allowances for meals for state and political subdivision officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of 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~~ five 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~~ seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ~~ten~~ twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~forty-five~~ fifty dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 18, 2005

Filed April 20, 2005

¹⁸⁷ Section 44-08-04 was also amended by section 1 of House Bill No. 1129, chapter 383.

CHAPTER 383

HOUSE BILL NO. 1129

(Government and Veterans Affairs Committee)
(At the request of the State Board of Higher Education)

MEAL ALLOWANCE OUTSIDE US

AN ACT to amend and reenact subsections 4 and 5 of section 44-08-04 of the North Dakota Century Code, relating to the allowance for state officers and employees for meals outside the continental United States.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁸ **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 44-08-04 of the North Dakota Century Code are amended and reenacted as follows:

4. The allowance for meals in ~~Canada, noncontinental United States and overseas nonforeign areas, including Alaska, and Hawaii~~ may not exceed one and one-half times the current continental United States standard rate, and Guam, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States general services administration per diem committee.
5. The allowance for meals outside the ~~continental United States, Canada, Alaska, and Hawaii~~ may not exceed two times the current continental United States standard rate is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States ~~general services administration~~ department of state.

Approved March 8, 2005

Filed March 8, 2005

¹⁸⁸ Section 44-08-04 was also amended by section 1 of Senate Bill No. 2195, chapter 382.

PARTNERSHIPS

CHAPTER 384

HOUSE BILL NO. 1273

(Representatives Klemm, Kretschmar)
(Senator Trenbeath)

PARTNERSHIP LAW REVISION

AN ACT to create and enact chapter 45-10.2 of the North Dakota Century Code, relating to limited partnerships; to amend and reenact subsections 1 and 4 of section 10-19.1-13, subsections 1 and 5 of section 10-32-10, subsections 1 and 5 of section 10-33-10, section 43-07-19, subsection 2 of section 45-11-01, subsections 1 and 5 of section 45-13-04.1, subsection 3 of section 45-21-01, subsection 5 of section 45-21-02, subsections 1 and 5 of section 45-22-04, subsections 11 and 15 of section 45-23-01, section 45-23-02, subsections 1 and 5 of sections 45-23-03, sections 45-23-04 and 45-23-07, subsection 18 of section 45-23-08, and subsection 3 of section 54-44.4-09 of the North Dakota Century Code, relating to limited partnerships and references to chapter 45-10.2; to repeal chapter 45-10.1 and section 45-12-01 of the North Dakota Century Code, relating to limited partnerships and provisions for existing limited partnerships; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁹ **SECTION 1. AMENDMENT.** Subsection 1 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

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", "limited", or an abbreviation of one or more of these words.
 - c. May not contain a word or phrase indicating or implying the corporation may not be incorporated under this chapter.
 - d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase indicating or implying the corporation is incorporated for a purpose other than a legal

¹⁸⁹ Section 10-19.1-13 was also amended by section 2 of House Bill No. 1273, chapter 384, and section 5 of House Bill No. 1391, chapter 100.

business purpose for which a corporation may be incorporated under this chapter.

- 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 that complies with subsection 7, 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;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited 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~~ 45-10.2-11, 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.

¹⁹⁰ **SECTION 2. AMENDMENT.** Subsection 4 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
 - 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;

¹⁹⁰ Section 10-19.1-13 was also amended by section 1 of House Bill No. 1273, chapter 384, and section 5 of House Bill No. 1391, chapter 100.

- 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~~ 45-10.2-11, 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.

¹⁹¹ **SECTION 3. AMENDMENT.** Subsections 1 and 5 of section 10-32-10 of the North Dakota Century Code are amended and reenacted as follows:

- 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", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation 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
 - 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~~ record which complies with subsection 3, of:
 - (a) Another limited liability company;
 - (b) A corporation;
 - (c) A limited partnership;
 - (d) A limited liability partnership; or

¹⁹¹ Section 10-32-10 was also amended by section 50 of House Bill No. 1391, chapter 100.

- (e) A limited liability limited partnership;
 - (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~~ 45-10.2-11, 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.
5. A limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
- a. Was organized, incorporated, 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~~ 45-10.2-11, 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.

¹⁹² **SECTION 4. AMENDMENT.** Subsections 1 and 5 of section 10-33-10 of the North Dakota Century Code are amended and reenacted as follows:

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.

¹⁹² Section 10-33-10 was also amended by section 95 of House Bill No. 1391, chapter 100.

- d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. 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.
- f. Unless a ~~document~~ record in compliance with subsection 2 is filed with the articles, may not be the same as or deceptively similar to:
 - (1) The name, whether foreign and authorized to conduct activities 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;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited 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~~ 45-10.2-11, 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.
- 5. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state.
 - b. Is authorized to conduct activities or transact business 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~~ 45-10.2-11, 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.

SECTION 5. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter ~~45-10.1~~ 45-10.2 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

SECTION 6. Chapter 45-10.2 of the North Dakota Century Code is created and enacted as follows:

45-10.2-01. (101) Citation. This chapter may be cited as the North Dakota Uniform Limited Partnership Act (2001).

45-10.2-02. (102) 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 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 the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:

- (1) To the principal place of business of the limited partnership; or
 - (2) To a general partner or agent of the limited partnership authorized by the limited partnership to receive the electronic communication; and
- b. That the electronic communication sets forth information from which the limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
- 3. "Business" includes every trade, occupation, activity, and profession.
- 4. "Certificate of limited partnership" means the certificate referred to in section 45-10.2-23 and the certificate as amended or restated.
- 5. "Constituent limited partnership" means a constituent organization that is a limited partnership.
- 6. "Constituent organization" means an organization that is party to a merger.
- 7. "Contribution", except in the phrase "right of contribution", means any benefit provided by a person to a limited partnership:
 - a. In order to become a partner; or
 - b. In the capacity of the person as a partner.
- 8. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-10.2-94 through 45-10.2-99.
- 9. "Converting limited partnership" means a converting organization that is a limited partnership.
- 10. "Converting organization" means an organization that converts into another organization pursuant to section 45-10.2-94.
- 11. "Debtor in bankruptcy" means a person that is the subject of:
 - a. An order of relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - b. A comparable order under federal, state, or foreign law governing insolvency.
- 12. "Distribution" means a transfer of money or other property from a limited partnership to a partner or to the transferee of the partner on account of a transferable interest owned by the transferee.
- 13. "Domestic organization" means an organization created under the laws of this state.

14. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
15. "Electronic communication" means any form of communication not directly involving the physical transmission of paper:

 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
16. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
17. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
18. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

 - a. That a record meeting the applicable requirements of this chapter together with the fees provided in section 45-10.2-109 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state did then:

 - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
 - (2) Record the record in the office of the secretary of state.
19. "Foreign limited liability limited partnership" means a partnership formed by two or more persons under the laws of a jurisdiction other than this state:

 - a. Which is required by those laws to have one or more general partners and one or more limited partners;
 - b. Whose general partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to chapter 45-23;
 - c. For a purpose for which a limited liability limited partnership may be organized under chapter 45-23; and
 - d. Which is in good standing in its jurisdiction of origin.
20. "Foreign limited partnership" means a partnership formed by two or more persons under laws of a jurisdiction other than this state:

 - a. Which is required by those laws to have one or more general partners and one or more limited partners;

- b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to this chapter;
 - c. For a purpose for which a limited partnership may be organized under this chapter; and
 - d. Which is in good standing in its jurisdiction of origin.
- 21. "Foreign organization" means an organization created under laws of a jurisdiction other than this state.
- 22. "General partner" means:
 - a. With respect to a limited partnership, a person:
 - (1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or
 - (2) That was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and
 - b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.
- 23. "Governing statute" means:
 - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, chapter 10-19.1;
 - (2) If a limited liability company, chapter 10-32;
 - (3) If a general partnership, chapters 45-12 through 45-21;
 - (4) If a limited partnership, this chapter;
 - (5) If a limited liability partnership, chapter 45-22; and
 - (6) If a limited liability limited partnership, chapter 45-23; and
 - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- 24. "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a partnership that is formed by two or more persons and which has one or more general partners and one or more limited partners:
 - a. Which is formed under chapter 45-23; or

- b. Which elects to become subject to chapter 45-23.
- 25. "Limited partner" means:
 - a. With respect to a limited partnership, a person that:
 - (1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or
 - (2) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and
 - b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.
- 26. "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership" means a partnership that is formed by two or more persons and which has one or more general partners and one or more limited partners:
 - a. Which is formed under this chapter; or
 - b. Which elects to become subject to this chapter under section 45-10.2-03.
- 27. "Notice":
 - a. Is given to a limited partnership:
 - (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited partnership; or
 - (2) When given by a form of electronic communication consented to by a general partner of the limited partnership to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited partnership has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited partnership has consented to receive notice;
 - (c) Posting on an electronic network on which a general partner of the limited partnership has consented to receive notice, together with separate notice to the limited partnership of the specific posting, upon the later of:
 - [1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which a general partner of the limited partnership has consented to receive notice, when directed to the limited partnership.

b. Is given to a partner of the limited partnership:

(1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited partnership; or

(2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;

(b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;

(c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

(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;

(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 there;

- (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
 - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) Any other form of electronic communication, by which the person has consented to receive notice, when directed to the person;
 - (5) When the method is fair and reasonable when all circumstances are considered.
 - d. Is given when deposited in the United States mail with sufficient postage affixed.
 - e. Is deemed received when it is given.
28. "Organization" means:
- a. Whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, and any other person subject to a governing statute; but
 - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated under the laws of another jurisdiction.
29. "Organizational records" means:
- a. For a domestic or foreign general partnership, its partnership agreement;
 - b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
 - c. For a domestic or foreign limited liability company, its articles of organization, bylaws or operating agreement, and any member control agreement, or comparable records as provided in its governing statute;

- d. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and
 - e. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the person that own it, have an ownership interest in it, or are members of it.
- 30. "Ownership interests" means for an organization which is:
 - a. A corporation, its shares;
 - b. A limited liability company, its membership interests;
 - c. A limited partnership, its partnership interests;
 - d. A general partnership, its partnership interests;
 - e. A limited liability partnership, its partnership interests; or
 - f. A limited liability limited partnership, its partnership interests.
- 31. "Partner" means a general or limited partner.
- 32. "Partnership agreement":
 - a. Means the agreement of the partners, whether oral, implied, in a record, or in any combination, concerning the limited partnership; and
 - b. Includes the agreement as amended.
- 33. "Partnership interest" means the transferable interest of a partner.
- 34. "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.
- 35. "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that coowns, has an ownership interest in, or is a member of the organization:
 - a. By the governing statute of an organization solely by reason of the person coowning, having an ownership interest in, or being a member of the organization; or
 - b. By the organizational records of an organization under a provision of the governing statute of an organization authorizing those records to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons coowning, having an ownership interest in, or being a member of the organization.
- 36. "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.
- 37. "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.
- 38. "Registered office" means the place in this state designated in the certificate of limited partnership or in the certificate of authority of a foreign limited partnership as the registered office.
- 39. "Required information" means the information that a limited partnership is required to maintain under section 45-10.2-13.
- 40. "Signed" means:
 - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record as provided under section 41-01-09; and
 - b. With respect to a record required by this chapter to be filed with the secretary of state that:
 - (1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
- 41. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- 42. "Surviving organization" means an organization into which one or more other organizations are merged and which:
 - a. May preexist the merger; or
 - b. May be created by the merger.
- 43. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.
- 44. "Transferable interest" means the right of a partner to receive distributions.

45. "Transferee" means, except in section 45-10.2-45, a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.
46. "Vote" includes authorization by written action.
47. "Written action" means:
- a. A written record signed by all of the persons required to take the action; and
 - b. The counterparts of a written record signed by any of the persons taking the action described.
 - (1) Each counterpart constitutes the action of the person signing; and
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

45-10.2-03. (1206) Application to existing relationships.

1. After June 30, 2005, no person may use chapter 45-10.1 to form an entity.
2. Before January 1, 2006, this chapter governs only:
 - a. A limited partnership formed after June 30, 2005; and
 - b. Except as otherwise provided in subsection 4, a limited partnership formed under chapter 45-10.1 which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.
3. Except as otherwise provided in subsection 4, on and after January 1, 2006, this chapter governs:
 - a. Any limited partnership formed under chapter 45-10.1 which has not previously elected to be governed by this chapter and is still in existence on January 1, 2006; and
 - b. All limited partnerships, including each limited partnership formed under chapter 45-10.1 which has previously elected to become governed by this chapter.
4. With respect to a limited partnership formed before July 1, 2005, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:
 - a. Subsection 3 of section 45-10.2-07 does not apply and the limited partnership has whatever duration it had under the law applicable immediately before the limited partnership became subject to this chapter;

- b. Sections 45-10.2-55 and 45-10.2-56 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before the limited partnership became subject to this chapter;
- c. Subsection 4 of section 45-10.2-57 does not apply;
- d. Subsection 5 of section 45-10.2-57 does not apply and a court has the same power to expel a general partner as the court had immediately before the limited partnership became subject to this chapter; and
- e. Subsection 3 of section 45-10.2-66 does not apply and the connection between the dissociation of a person as a general partner and the dissolution of the limited partnership is the same as existed immediately before the limited partnership became subject to this chapter.

45-10.2-04. (1207) Savings clause. This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

45-10.2-05. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

- 1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
- 2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
- 3. If a provision requires a record to be in writing, then an electronic record satisfies the requirement;
- 4. If a provision requires a signature, then an electronic signature satisfies the requirement; and
- 5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede any provision of chapter 9-16.

45-10.2-06. (103) Knowledge and notice.

- 1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
- 2. A person has notice of a fact if the person:
 - a. Knows of the fact;
 - b. Has received notice of the fact as provided in subsection 27 of section 45-10.2-02;
 - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or

- d. Has notice of it under subsection 3 or 4.
- 3. A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsections 4 and 9, the certificate is not notice of any other fact.
- 4. Subject to subsection 9, a person has notice of:
 - a. The dissociation of another person as a general partner ninety days after the effective date of a filed amendment to the certificate of limited partnership which states that the other person has dissociated or ninety days after the effective date of a filed statement of dissociation pertaining to the other person, whichever occurs first;
 - b. The dissolution of a limited partnership ninety days after the effective date of a filed amendment to the certificate of limited partnership stating that the limited partnership is dissolved;
 - c. The termination of a limited partnership ninety days after the effective date of a filed statement of termination;
 - d. The conversion of a limited partnership under sections 45-10.2-94 through 45-10.2-99 ninety days after the effective date of the filed articles of conversion; or
 - e. A merger under sections 45-10.2-100 through 45-10.2-103 ninety days after the effective date of the filed articles of merger.
- 5. A person notifies or gives a notification to another person by taking the steps provided in subsection 27 of section 45-10.2-02, whether or not the other person learns of it.
- 6. A person receives a notification as provided in subsection 27 of section 45-10.2-02.
- 7. Except as otherwise provided in subsection 8 and except as otherwise provided in subsection 27 of section 45-10.2-02, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
 - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
 - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has

reason to know of the transaction and that the transaction would be materially affected by the information.

8. Knowledge, notice, or receipt of a notification of a fact relating to the limited partnership by a general partner is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. Knowledge, notice, or receipt of a notification of a fact relating to the limited partnership by a limited partner is not effective as knowledge by, notice to, or receipt of a notification by the limited partnership.
9. Notice otherwise effective under subsection 4 does not affect the power of a person to transfer real property held in the name of a limited partnership unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
10. With respect to notice given by a form of electronic communication:
 - a. Consent by a partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
 - b. An affidavit of a general partner or an authorized agent of the limited partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

45-10.2-07. (104) Nature, purpose, and duration of entity.

1. A limited partnership is an entity distinct from its partners.
2. A limited partnership may be organized under this chapter for any lawful purpose except banking or insurance.
3. A limited partnership has a perpetual duration unless otherwise provided in its certificate of limited partnership.

45-10.2-08. (105) General powers. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

45-10.2-09. (106 and 107) Governing law.

1. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

2. Unless displaced by particular provision of this chapter, the principles of law and equity supplement this chapter.

45-10.2-10. Limited partnership name.

1. The name of each limited partnership as set forth in the certificate of limited partnership:
- a. Must be in the English language or in another language expressed in English letters or characters.
 - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviations 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 contain the name of any partner.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase that indicates or implies that the limited partnership:
 - (1) Is organized for a purpose other than:
 - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
 - (b) For a purpose stated in its certificate of limited partnership; or
 - (2) May not be organized under this chapter.
 - 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 certificate of limited partnership a record in compliance with subsection 3, of:
 - (a) Another limited partnership;
 - (b) A corporation;
 - (c) A limited liability company;
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
 - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner

- provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, 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 judgement 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 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 45-10.2-11 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 right 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 the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the organizations, if the other organization whose name is sought to be used:
 - 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, 45-10.2-11, 45-13-04.2, 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.
- 8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 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 3. A limited partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership 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 as provided in subsection 3.
- 9. Subject to section 45-10.2-78, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

45-10.2-11. Reserved name.

- 1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.2-10 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.
 - 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 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 in the office of the secretary of state a notice of transfer, and specifying the name and address of the transferee.
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.
5. The secretary of state may destroy all reserved name requests and the index thereof one year after expiration.

45-10.2-12. (110) Effect of partnership agreement and nonwaivable provisions.

1. Except as otherwise provided in subsection 2, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.
2. A partnership agreement may not:
 - a. Vary the power of a limited partnership under section 45-10.2-08 to sue, be sued, and defend in its own name;
 - b. Vary the law applicable to a limited partnership under section 45-10.2-09;
 - c. Vary the requirements of section 45-10.2-25;
 - d. Vary the information required under section 45-10.2-13 or unreasonably restrict the right to information under section 45-10.2-34 or 45-10.2-43, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restrictions on use;
 - e. Eliminate the duty of loyalty under section 45-10.2-44, but the partnership agreement may:
 - (1) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - (2) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - f. Unreasonably reduce the duty of care under subsection 3 of section 45-10.2-44;

- g. Eliminate the obligation of good faith and fair dealing under subsection 2 of section 45-10.2-35 and subsection 4 of section 45-10.2-44, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- h. Vary the power of a person to dissociate as a general partner under subsection 1 of section 45-10.2-58 except to require that the notice under subsection 1 of section 45-10.2-57 be in a record;
- i. Vary the power of a court to decree dissolution in the circumstances specified in section 45-10.2-67;
- j. Vary the requirement to wind up the business of a partnership as specified in section 45-10.2-68;
- k. Unreasonably restrict the right to maintain an action under sections 45-10.2-89 through 45-10.2-93;
- l. Restrict the right of a partner under subsection 1 of section 45-10.2-104 to approve a conversion or merger;
- m. Restrict the right of a general partner under subsection 2 of section 45-10.2-104 to consent to an amendment to the certificate of limited partnership which converts the limited partnership to a limited liability limited partnership; or
- n. Restrict rights under this chapter of a person other than a partner or a transferee.

45-10.2-13. (111) Required information. A limited partnership shall maintain at its principal executive office the following information:

- 1. A current list showing the full name and last-known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;
- 2. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;
- 3. A copy of any filed articles of conversion or merger;
- 4. a copy of the federal, state, and local income tax returns and reports of a limited partnership, if any, for the three most recent years;
- 5. A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;
- 6. A copy of any financial statement of the limited partnership for the three most recent years;
- 7. A copy of the three most recent annual reports delivered by the limited partnership to the secretary of state pursuant to section 45-10.2-108;

8. A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and
9. Unless contained in a partnership agreement made in a record, a record stating:
 - a. The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;
 - b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;
 - c. For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and
 - d. Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

45-10.2-14. (112) Business transactions of partner with partnership. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

45-10.2-15. (113) Dual capacity. A person may be both a general partner and a limited partner.

1. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities.
2. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners.
3. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

45-10.2-16. 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 application for certificate of authority of a foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited partnership;
4. Limited liability partnership;
5. Limited liability limited partnership;

6. General partnership; or
7. Any other organization that has a registration responsibility with the secretary of state.

45-10.2-17. Registered office and registered agent.

1. 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. 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.
4. Proof of the consent of the registered agent to serve in the capacity of registered agent must be filed with the secretary of state.

45-10.2-18. Change of registered office or agent - Resignation of registered agent - Change of name or address of registered agent.

1. A limited partnership may change the registered office of the limited partnership, change the registered agent of the limited partnership, or state a change in the name of the registered agent of the limited partnership, by filing with the secretary of state a statement containing:
 - a. The name of the limited partnership;
 - b. The new address of the registered office of the limited partnership, if the address of the registered office of the limited partnership is to be changed;
 - c. The name of the new registered agent of the limited partnership, if the registered agent of the limited partnership is to be designated or changed;
 - d. The name of the registered agent of the limited partnership as changed, if the name of the registered agent of the limited partnership is to be changed;
 - e. A statement that the address of the registered office of the limited partnership and the address of the business office of the registered agent of the limited partnership, 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 general partners.
2. A registered agent of a limited partnership 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 was given to the limited partnership at the principal executive office of the limited partnership, or to a legal representative of the limited 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 the name of the registered agent, as the case may be, of each limited partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.
4. The fee provided in section 45-10.2-109 for change of registered office must be refunded if in the opinion of the secretary of state a change of address of registered office results from rezoning or postal reassignment.

45-10.2-19. Action without a meeting. An action required or permitted to be taken or permitted to be taken at a meeting of the partners may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the partners entitled to vote on that action.

1. If the certificate of limited partnership or the partnership agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the partners entitled to vote on the action who own voting power equal to the voting power that would be required to take the same action at a meeting of the partners at which all partners entitled to vote on the action were present. After the adoption of the initial certificate of limited partnership or the initial partnership agreement, an amendment to the certificate of limited partnership or to the partnership agreement to permit written action to be taken by less than all partners entitled to vote on an action requires the approval of all partners entitled to vote on the amendment.
 - a. When written action is permitted to be taken by less than all partners entitled to vote on the action, all partners entitled to vote on the action must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A partner who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the partners entitled to

vote on the action, unless a different effective time is provided in the written action.

3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the general partner signing the certificate must so indicate if the action was taken under this section.

45-10.2-20. Remote communications for partner meetings.

1. This section must be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the certificate of limited partnership or the partnership agreement and determined by the general partners:
 - a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
 - (1) If notice of the meeting is given to every holder of interests entitled to vote as would be required by the certificate of limited partnership or the partnership agreement for a meeting; and
 - (2) If the number of partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
 - b. A partner not physically present in person or by proxy at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
 - a. The limited partnership shall implement reasonable measures to:
 - (1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and
 - (2) Provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

- (2) A proxy so appointed may vote on behalf of the partner, or otherwise participate, in a meeting by remote communication according to section 45-10.2-20 to the extent the partner appointing the proxy would have been entitled to participate by remote communication according to section 45-10.2-20 if the partner did not appoint the proxy.
 - c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or 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.
 - d. An appointment of a proxy for partnership interests held jointly by two or more partners is valid if signed or consented to by authenticated electronic communication by any one of the partners, unless the limited partnership receives from any of those partners written notice or authenticated electronic communication 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 partnership interests or in the limited partnership. A partner 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 partner 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 a general partner or agent of the limited partnership.
 5. The death or incapacity of a person appointing a proxy does not affect the right of the limited partnership to accept the authority of the proxy, unless written notice of the death or incapacity is received by a partner or agent 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 partner:

- a. Then any one of them may vote the partnership interests on each item of business in accordance with specific instructions contained in the appointment; or
 - b. If no specific instructions are contained in the appointment with respect to voting the partnership interests on a particular item of business, then the partnership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, then the partnership interests may not be voted.
7. Subject to section 45-10.2-22 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the limited partnership may accept a vote or action by the proxy as the action of the partner. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the partner 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 partner to vote on less than all items of business considered at a meeting of partners, then the partner is considered to be present and entitled to vote by the proxy, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a partner 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.

45-10.2-22. Acceptance of partner act by the limited partnership.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a partner, then the limited partnership if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the partner.
2. Unless the certificate of limited partnership or partnership agreement provides otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a partner, then the limited partnership if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the partner if:
 - a. The partner 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 partner, and, if the limited partnership requests, evidence of fiduciary status acceptable to the limited partnership 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 partner, and, if the limited partnership requests, evidence of this status acceptable to the limited partnership 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 partner, and, if the limited partnership requests, evidence acceptable to the limited partnership of the authority of the signatory to sign for the partner has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - e. Two or more persons hold the 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 partnership may reject a vote, consent, waiver, or proxy appointment if the partner or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on it or the authority of the signatory to sign for the partner.
- 4. The limited partnership or its 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 partner for the consequences of the acceptance or rejection.
- 5. Action of the limited partnership 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.

45-10.2-23. (201) Formation of limited partnership and certificate of limited partnership.

- 1. In order for a limited partnership to be formed, a certificate of limited partnership must be filed with the secretary of state.
 - a. The certificate must state:
 - (1) The name of the limited partnership, which must comply with section 45-10.2-10;
 - (2) The general character of its business;
 - (3) The street address and mailing address of the principal executive office;
 - (4) The name, street address, and mailing address of each general partner;
 - (5) The name, street address, and mailing address of the registered agent; and
 - (6) Any additional information required by sections 45-10.2-94 through 45-10.2-106.
 - b. A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in subsection 2 of section 45-10.2-12 in a manner inconsistent with that section.

2. A limited partnership is formed when the certificate of limited partnership is filed with the secretary of state or on the date specified in the certificate of limited partnership that is within ninety days after the filing of the certificate of limited partnership with the secretary of state.
3. Subject to subdivision b of subsection 1, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:
 - a. The partnership agreement prevails as to partners and transferees; and
 - b. The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

45-10.2-24. (202) Amendment or restatement of certificate.

1. In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to sections 45-10.2-100 through 45-10.2-106, articles of merger stating:
 - a. The name of the limited partnership; and
 - b. The changes the amendment makes to the certificate as most recently amended or restated.
2. A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:
 - a. The change of name of the limited partnership;
 - b. The admission of a new general partner;
 - c. The dissociation of a person as a general partner; or
 - d. The appointment of a person to wind up the activities of the limited partnership under subsection 3 or 4 of section 45-10.2-68.
3. A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:
 - a. Cause the certificate to be amended; or
 - b. If appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 45-10.2-18 or a statement of correction pursuant to section 45-10.2-28.
4. A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

5. A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.
6. Subject to subsection 3 of section 45-10.2-27, an amendment or restated certificate is effective when filed by the secretary of state or on a date specified in the amendment or restated certificate that is within ninety days after the filing of the amendment or restated certificate with the secretary of state.
7. A limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an amendment to a certificate of limited partnership.
8. A limited partnership that files an amendment to change its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership.

45-10.2-25. (204) Signing of records.

1. Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:
 - a. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.
 - b. An amendment to the certificate of limited partnership converting the limited partnership to a limited liability limited partnership must be signed by all general partners listed in the certificate.
 - c. An amendment to the certificate of limited partnership designating as general partner a person admitted under subdivision b of subsection 3 of section 45-10.2-66 following the dissociation of a last general partner of a limited partnership must be signed by that person.
 - d. An amendment to the certificate of limited partnership required by subsection 3 of section 45-10.2-68 following the appointment of a person to wind up the activities of the dissolved limited partnership must be signed by that person.
 - e. Any other amendment to the certificate of limited partnership must be signed by:
 - (1) At least one general partner listed in the certificate;
 - (2) Each other person designated in the amendment as a new general partner; and
 - (3) Each person that the amendment indicates has dissociated as a general partner, unless:

- (a) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (b) The person has previously delivered to the secretary of state for filing a statement of dissociation.
 - f. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subdivision of this subsection, the certificate must be signed in a manner that satisfies that subdivision.
 - g. A statement of termination must be signed by a majority in interest of the general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, then by the person appointed pursuant to subsection 3 or 4 of section 45-10.2-68 to wind up the activities of the dissolved limited partnership.
 - h. Articles of conversion must be signed by all of the general partners listed in the certificate of limited partnership.
 - i. Articles of merger must be signed as provided in subsection 1 of section 45-10.2-102.
 - j. Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate of limited partnership.
 - k. A statement by a person pursuant to subdivision d of subsection 1 of section 45-10.2-59 stating that the person has dissociated as a general partner must be signed by that person.
 - l. A statement of withdrawal by a person pursuant to section 45-10.2-36 must be signed by that person.
 - m. A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.
 - n. Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.
- 2. Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

45-10.2-26. (205) Signing and filing pursuant to judicial order.

- 1. If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, then any other person that is aggrieved may petition the district court to order:
 - a. The person to sign the record and deliver the record to the secretary of state for filing; or

- b. The secretary of state to file the record unsigned.
- 2. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, then the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.
- 3. A record filed unsigned pursuant to this section is effective without being signed.

45-10.2-27. (206) Delivery to and filing of records by secretary of state and effective date.

- 1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
 - a. For a statement of dissociation, send a copy of the filed statement:
 - (1) To the person which the statement indicates has dissociated as a general partner; and
 - (2) To the limited partnership;
 - b. For a statement of withdrawal, send a copy of the filed statement:
 - (1) To the person on whose behalf the record was filed; and
 - (2) If the statement refers to an existing limited partnership, to the limited partnership; and
 - c. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.
- 2. Upon request and payment of a fee provided in section 45-10.2-109, the secretary of state shall send to the requester a certified copy of the requested record.
- 3. Except as otherwise provided in sections 45-10.2-18 and 45-10.2-28, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
 - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.

- b. If the record specifies a delayed effective date within ninety days, then on the specified date.

45-10.2-28. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
 - a. Must:
 - (1) Be signed by:
 - (a) The person that signed the original record; or
 - (b) By a person authorized to sign on behalf of that person;
 - (2) Set forth the name of the limited partnership that filed the record;
 - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
 - (4) Identify the inaccuracy, error, or defect to be corrected; and
 - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
 - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
 - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
 - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
 - (1) On the date the statement of correction was filed:
 - (a) As to persons adversely affected by the correction; and

- (b) For the purposes of subsections 3 and 4 of section 45-10.2-06; and
 - (2) On the date the original record was filed as to all other persons and for all other purposes.

45-10.2-29. (208) Liability for false information in filed record. If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, then a person that suffers loss by reliance on the information may recover damages for the loss from:

- 1. A person that signed the record, or caused another to sign it on behalf of a person, and knew the information to be false at the time the record was signed; and
- 2. A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 45-10.2-24, file a petition pursuant to section 45-10.2-26, or deliver to the secretary of state for filing a statement of change pursuant to section 45-10.2-18 or a statement of correction pursuant to section 45-10.2-28.

45-10.2-30. (209) Certificate of existence or authorization.

- 1. The secretary of state, upon request and payment of the fee provided in section 45-10.2-109, shall furnish a certificate of existence for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state:
 - a. The name of the limited partnership;
 - b. That it was duly formed under the laws of this state and date of formation; and
 - c. Whether all fees and penalties due to the secretary of state under this chapter have been paid.
- 2. The secretary of state, upon request and payment of the fee provided in section 45-10.2-109, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:
 - a. The name of the foreign limited partnership;
 - b. That it is authorized to transact business in this state; and
 - c. Whether all fees and penalties due to the secretary of state under this chapter have been paid.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

45-10.2-31. (301) Becoming a limited partner. A person becomes a limited partner:

1. As provided in the partnership agreement;
2. As the result of a conversion or merger under sections 45-10.2-94 through 45-10.2-106; or
3. With the consent of all of the partners.

45-10.2-32. (302) No right or power as limited partner to bind limited partnership. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

45-10.2-33. (303) No liability as limited partner for limited partnership obligation. An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

45-10.2-34. (304) Right of limited partner and former limited partner to information.

1. On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the principal executive office of the limited partnership. The limited partner need not have any particular purpose for seeking the information.
2. During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:
 - a. The limited partner seeks the information for a purpose reasonably related to an interest as a limited partner;
 - b. The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
 - c. The information sought is directly connected to the purpose of the limited partner.

3. Within ten days after receiving a demand pursuant to subsection 2, the limited partnership in a record shall inform the limited partner that made the demand:

 - a. What information the limited partnership will provide in response to the demand;
 - b. When and where the limited partnership will provide the information; and
 - c. If the limited partnership declines to provide any demanded information, the reasons of the limited partnership for declining.
4. Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the designated office of the limited partnership if:

 - a. The information pertains to the period during which the person was a limited partner;
 - b. The person seeks the information in good faith; and
 - c. The person meets the requirements of subsection 2.
5. The limited partnership shall respond to a demand made pursuant to subsection 4 in the same manner as provided in subsection 3.
6. If a limited partner dies, then section 45-10.2-65 applies.
7. The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.
8. A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.
9. Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the decision of the limited partner that the limited partnership knows.
10. A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.
11. The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

45-10.2-35. (305) Limited duties of limited partners.

1. A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.
2. A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
3. A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the conduct of the limited partner furthers the interest of that limited partner.

45-10.2-36. (306) Person erroneously believing self to be limited partner.

1. Except as otherwise provided in subsection 2, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the obligations of the enterprise by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:
 - a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or
 - b. Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.
2. A person that makes an investment described in subsection 1 is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.
3. If a person makes a diligent effort in good faith to comply with subdivision a of subsection 1 and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, then the person has the right to withdraw from the enterprise pursuant to subdivision b of subsection 1 even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become coowners of the enterprise.

45-10.2-37. (401) Becoming general partner. A person becomes a general partner:

1. As provided in the partnership agreement;
2. Under subdivision b of subsection 3 of section 45-10.2-66 following the dissociation of the last general partner of a limited partnership;

3. As the result of a conversion or merger under sections 45-10.2-94 through 45-10.2-106; or
4. With the consent of all the partners.

45-10.2-38. (402) General partner agent of limited partnership.

1. Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the name of the partnership, for apparently carrying on in the ordinary course the activities of the limited partnership or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under subsection 4 of section 45-10.2-06 that the general partner lacked authority.
2. An act of a general partner which is not apparently for carrying on in the ordinary course the activities of the limited partnership or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all of the other partners.

45-10.2-39. (403) Limited partnership liable for actionable conduct of general partner.

1. A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.
2. If, in the course of the activities of the limited partnership or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, then the limited partnership is liable for the loss.

45-10.2-40. (404) Liability of general partner.

1. Except as otherwise provided in subsections 2 and 3, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.
2. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.
3. An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership.
 - a. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner.

- b. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required under subdivision b of subsection 2 of section 45-10.2-42 to become a limited liability limited partnership pursuant to chapter 45-23.

45-10.2-41. (405) Actions by and against partnership and partners.

1. To the extent not inconsistent with section 45-10.2-40, a general partner may be joined in an action against the limited partnership or named in a separate action.
2. A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from assets of a general partner unless there is also a judgment against the general partner.
3. A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 45-10.2-40, and:
 - a. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - b. The limited partnership is a debtor in bankruptcy;
 - c. The general partner has agreed that the creditor need not exhaust limited partnership assets;
 - d. A court grants permissions to the judgment creditor to levy execution against the assets of a general partner based on a finding:
 - (1) That limited partnership assets subject to execution are clearly insufficient to satisfy the judgment;
 - (2) That exhaustion of limited partnership assets is excessively burdensome; or
 - (3) That the grant of permission is an appropriate exercise of equitable powers of the court; or
 - e. Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

45-10.2-42. (406) Management rights of general partner.

1. Each general partner has equal rights in the management and conduct of the activities of the limited partnership. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

2. The consent of each partner is necessary:
 - a. To amend the partnership agreement;
 - b. Subject to section 45-10.2-104, to amend the certificate of limited partnership to convert the limited partnership to a limited liability limited partnership; and
 - c. To sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the limited partnership, with or without the good will, other than in the usual and regular course of the activities of the limited partnership.
3. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.
4. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.
5. A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection 3 or 4 constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.
6. A general partner is not entitled to remuneration for services performed for the partnership.

45-10.2-43. (407) Right of general partner and former general partner to information.

1. A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:
 - a. In the principal executive office of the limited partnership, required information; and
 - b. At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the activities and financial condition of the limited partnership.
2. Each general partner and the limited partnership shall furnish to a general partner:
 - a. Without demand, any information concerning the activities and financial condition of the limited partnership reasonably required for the proper exercise of the rights and duties of the general partner under the partnership agreement or this chapter; and
 - b. On demand, any other information concerning the activities of the limited partnership, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

3. Subject to subsection 5, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection 1 at the location specified in subsection 1 if:
 - a. The information or record pertains to the period during which the person was a general partner;
 - b. The person seeks the information or record in good faith; and
 - c. The person satisfies the requirements imposed on a limited partner by subsection 2 of section 45-10.2-34.
4. The limited partnership shall respond to a demand made pursuant to subsection 3 in the same manner as provided in subsection 3 of section 45-10.2-34.
5. If a general partner dies, then section 45-10.2-65 applies.
6. The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.
7. A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.
8. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.
9. The rights under this section do not extend to a person as transferee, but the rights under subsection 3 of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under subdivisions b and c of subsection 7 of section 45-10.2-57.

45-10.2-44. (408) General standards of conduct of general partner.

1. The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections 2 and 3.
2. A duty of loyalty of the general partner to the limited partnership and the other partners is limited to the following:
 - a. To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the activities of the limited partnership or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

- b. To refrain from dealing with the limited partnership in the conduct or winding up of the activities of the limited partnership as or on behalf of a party having an interest adverse to the limited partnership; and
 - c. To refrain from competing with the limited partnership in the conduct or winding up of the activities of the limited partnership.
- 3. Duty of care of a general partner to the limited partnership and the other partners in the conduct and winding up of the activities of a limited partnership is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- 4. A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
- 5. A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because conduct of the general partner furthers the interest of that general partner.

45-10.2-45. (409) Transfer of partnership property.

- 1. Subject to the effect of a notification effective under subsections 4 and 9 of section 45-10.2-06, property held in the name of a limited partnership may be transferred by a record of transfer signed by a general partner in the limited partnership name.
- 2. Where a transfer has been made to an initial transferee through a record of transfer effective under subsection 1, a limited partnership may recover the transferred limited partnership property:
 - a. From a transferee only if the limited partnership proves that signing the record of initial transfer did not bind the partnership under section 45-10.2-38; and
 - b. As to a subsequent transferee who gave value for the property, only if the limited partnership proves that the subsequent transferee knew or had received a notification that the person that signed the record of initial transfer lacked authority to bind the partnership.
- 3. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection 2 from any earlier transferee of the property.
- 4. This section does not affect the power of a person dissociated as a general partner to bind a limited partnership under subsection 1 of section 45-10.2-60 and subsection 2 of section 45-10.2-70.

45-10.2-46. (501) Form of contribution. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

45-10.2-47. (502) Liability for contribution.

1. The obligation of a partner to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the death of a partner, disability, or other inability to perform personally.
2. If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.
3. The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise acts in reliance on an obligation described in subsection 1, without notice of any compromise under this subsection, may enforce the original obligation.

45-10.2-48. (503) Sharing of distributions. A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

45-10.2-49. (504) Interim distributions. A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

45-10.2-50. (505) No distribution on account of dissociation. A person does not have a right to receive a distribution on account of dissociation.

45-10.2-51. (506) Distribution in kind. A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to subsection 2 of section 45-10.2-75, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the share of distributions of the partner.

45-10.2-52. (507) Right to distribution. When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the obligation of the limited partnership to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

45-10.2-53. (508) Limitation on distribution.

1. A limited partnership may not make a distribution in violation of the partnership agreement.
2. A limited partnership may not make a distribution if after the distribution:
 - a. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the activities of the limited partnership; or

- b. The total assets of the limited partnership would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.
- 3. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- 4. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured:
 - a. In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and
 - b. In all other cases, as of the date:
 - (1) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or
 - (2) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.
- 5. Indebtedness of a limited partnership to a partner incurred by reason of a distribution made in accordance with this section is at parity with the indebtedness of the limited partnership to its general, unsecured creditors.
- 6. Indebtedness of a limited partnership, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.
- 7. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

45-10.2-54. (509) Liability for improper distributions.

- 1. A general partner that consents to a distribution made in violation of section 45-10.2-53 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 45-10.2-44.
- 2. A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section

45-10.2-53 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 45-10.2-53.

3. A general partner against which an action is commenced under subsection 1 may:
 - a. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person; and
 - b. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2.
4. An action under this section is barred if it is not commenced within two years after the distribution.

45-10.2-55. (601) Dissociation as limited partner.

1. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.
2. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:
 - a. The limited partnership has notice of the express will of a person to withdraw as a limited partner or on a later date specified by the person;
 - b. An event agreed to in the partnership agreement as causing the dissociation of a person as a limited partner;
 - c. The expulsion of a person as a limited partner pursuant to the partnership agreement;
 - d. The expulsion of a person as a limited partner by the unanimous consent of the other partners if:
 - (1) It is unlawful to carry on the activities of the limited partnership with the person as a limited partner;
 - (2) There has been a transfer of all of the transferable interest of the person in the limited partnership, other than a transfer for security purposes, or a court order charging the interest of the person, which has not been foreclosed;
 - (3) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is not revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

- (4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
 - e. On application by the limited partnership, the expulsion of the person as a limited partner by judicial order because:
 - (1) The person engaged in wrongful conduct that adversely and materially affected the activities of the limited partnership;
 - (2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 45-10.2-35; or
 - (3) The person engaged in conduct relating to the activities of the limited partnership which make it not reasonably practicable to carry on the activities with the person as limited partner;
 - f. In the case of a person who is an individual, the death of the person;
 - g. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the entire transferable interest in the limited partnership of the trust, but not merely by reason of the substitution of a successor trustee;
 - h. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the entire transferable interest of the estate in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
 - i. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; and
 - j. The participation by limited partnership in a conversion or merger under sections 45-10.2-94 through 45-10.2-106, if the limited partnership:
 - (1) Is not the converted or surviving organization; or
 - (2) Is the converted or surviving organization but, as a result of the conversion or merger, the person ceases to be a limited partner.

45-10.2-56. (602) Effect of dissociation as limited partner.

- 1. Upon the dissociation of a person as a limited partner:
 - a. Subject to section 45-10.2-65, the person does not have further rights as a limited partner;
 - b. The obligation of a person for good faith and fair dealing as a limited partner under subsection 2 of section 45-10.2-35 continues

only as to matters arising and events occurring before the dissociation; and

- c. Subject to section 45-10.2-65 and sections 45-10.2-94 through 45-10.2-106, any transferable interest owned by the person in the capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.
 2. The dissociation of a person as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

45-10.2-57. (603) Dissociation as general partner. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

1. The limited partnership having notice of the express will of a person to withdraw as a general partner or on a later date specified by the person;
2. An event agreed to in the partnership agreement as causing the dissociation of a person as a general partner;
3. The expulsion of a person as a general partner pursuant to the partnership agreement;
4. The expulsion of a person as a general partner by the unanimous consent of the other partners if:
 - a. It is unlawful to carry on the activities of the limited partnership with the person as a general partner;
 - b. There has been a transfer of all or substantially all of the transferable interest of a person in the limited partnership, other than a transfer for security purposes, or a court order charging the interest of a person, which has not been foreclosed;
 - c. The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
 - d. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
5. On application by the limited partnership, the expulsion of a person as a general partner by judicial determination because:
 - a. The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;
 - b. The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 45-10.2-44; or

- c. The person engaged in conduct relating to the activities of the limited partnership which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;
- 6. The person:
 - a. Becoming a debtor in bankruptcy;
 - b. Executing an assignment for the benefit of creditors;
 - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the property of the person; or
 - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the property of the person obtained without the consent or acquiescence of the person, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- 7. In the case of a person who is an individual:
 - a. The death of the person;
 - b. The appointment of a guardian or general conservator for the person; or
 - c. A judicial determination that the person has otherwise become incapable of performing the duties as a general partner under the partnership agreement;
- 8. In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the entire transferable interest of the trust in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- 9. In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the entire transferable interest of the estate in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- 10. Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or
- 11. The participation of the limited partnership in a conversion or merger under sections 45-10.2-94 through 45-10.2-106, if the limited partnership:
 - a. Is not the converted or surviving organization; or
 - b. Is the converted or surviving organization but, as a result of the conversion or merger, the person ceases to be a general partner.

45-10.2-58. (604) Power of a person to dissociate as a general partner - Wrongful dissociation.

1. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to subsection 1 of section 45-10.2-57.
2. The dissociation of a person as a general partner is wrongful only if:
 - a. It is in breach of an express provision of the partnership agreement; or
 - b. It occurs before the termination of the limited partnership and:
 - (1) The person withdraws as a general partner by express will;
 - (2) The person is expelled as a general partner by judicial determination under subsection 5 of section 45-10.2-57;
 - (3) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or
 - (4) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.
3. A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 45-10.2-89, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

45-10.2-59. (605) Effect of dissociation as general partner.

1. Upon the dissociation of a person as a general partner:
 - a. The right of the person to participate as a general partner in the management and conduct of the activities of the partnership terminates;
 - b. The duty of loyalty of the person as a general partner under subdivision c of subsection 2 of section 45-10.2-44 terminates;
 - c. The duty of loyalty of the person as a general partner under subdivisions a and b of subsection 2 of section 45-10.2-44 and duty of care under subsection 3 of section 45-10.2-44 continue only with regard to matters arising and events occurring before dissociation of the person as a general partner;
 - d. The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

- e. Subject to section 45-10.2-65 and sections 45-10.2-94 through 45-10.2-106, any transferable interest owned by the person immediately before dissociation in the capacity as a general partner is owned by the person as a mere transferee.
- 2. The dissociation of a person as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

45-10.2-60. (606) Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

- 1. After a person is dissociated as a general partner and before the limited partnership is dissolved, or is converted or merged out of existence under sections 45-10.2-94 through 45-10.2-106, the limited partnership is bound by an act of the person if:
 - a. The act would have bound the limited partnership under section 45-10.2-38 before the dissociation; and
 - b. At the time the other party enters into the transaction:
 - (1) Less than two years have passed since the dissociation; and
 - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.
- 2. If a limited partnership is bound under subsection 1, then the person dissociated as a general partner which caused the limited partnership to be bound is liable:
 - a. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1; and
 - b. If a general partner or another person dissociated as a general partner is liable for the obligation, then to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

45-10.2-61. (607) Liability to other persons of person dissociated as general partner.

- 1. The dissociation of a person as a general partner does not of itself discharge the liability of a person as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for an obligation of a limited partnership incurred after dissociation.
- 2. A person whose dissociation as a general partner resulted in a dissolution and winding up of the activities of the limited partnership is liable to the same extent as a general partner under section 45-10.2-40 on an obligation incurred by the limited partnership under section 45-10.2-70.

3. A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the activities of the limited partnership is liable on a transaction entered into by the limited partnership after the dissociation only if:
 - a. A general partner would be liable on the transaction; and
 - b. At the time the other party enters into the transaction:
 - (1) Less than two years have passed since the dissociation; and
 - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.
4. By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.
5. A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the creditor of the limited partnership, with notice of the dissociation of the person as a general partner but without the consent of the person, agrees to a material alteration in the nature or time of payment of the obligation.

45-10.2-62. (701) Transferable interest of a partner. The only interest of a partner that is transferable is the transferable interest of the partner. A transferable interest is personal property.

45-10.2-63. (702) Transfer of the transferable interest of a partner.

1. A transfer, in whole or in part, of the transferable interest of a partner:
 - a. Is permissible;
 - b. Does not by itself cause the dissociation of a partner or a dissolution and winding up of the activities of the limited partnership; and
 - c. Does not, as against the other partners or the limited partnership, entitle the transferee:
 - (1) To participate in the management or conduct of the activities of the limited partnership;
 - (2) To require access to information concerning the transactions of the limited partnership except as otherwise provided in subsection 3; or
 - (3) To inspect or copy the required information or the other records of the limited partnership.
2. A transferee has a right to receive, in accordance with the transfer:
 - a. Distributions to which the transferor would otherwise be entitled; and

- b. Upon the dissolution and winding up of the activities of the limited partnership the net amount otherwise distributable to the transferor.
- 3. In a dissolution and winding up, a transferee is entitled to an account of the transactions of the limited partnership only from the date of dissolution.
- 4. Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.
- 5. A limited partnership need not give effect to the rights of a transferee under this section until the limited partnership has notice of the transfer.
- 6. A transfer of the transferable interest of a partner in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.
- 7. A transferee that becomes a partner with respect to a transferable interest is liable for the obligations of the transferor under sections 45-10.2-47 and 45-10.2-54. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

45-10.2-64. (703) Rights of creditor of partner or transferee.

- 1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- 2. A charging order constitutes a lien on the transferable interest of the judgment debtor. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
- 3. At any time before foreclosure, an interest charged may be redeemed:
 - a. By the judgment debtor;
 - b. With property other than limited partnership property, by one or more of the other partners; or
 - c. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.
- 4. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the transferable interest of the judgment debtor.

45-10.2-65. (704) Power of estate of deceased partner. If a partner dies, then the personal representative or other legal representative of the deceased partner may exercise the rights of a transferee as provided in section 45-10.2-63 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 45-10.2-34.

45-10.2-66. (801) Nonjudicial dissolution. Except as otherwise provided in section 45-10.2-67, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. The happening of an event specified in the partnership agreement;
2. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
3. After the dissociation of a person as a general partner:
 - a. If the limited partnership has at least one remaining general partner, then the consent to dissolve the limited partnership given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or
 - b. If the limited partnership does not have a remaining general partner, then the passage of ninety days after the dissociation unless before the end of the period:
 - (1) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - (2) At least one person is admitted as a general partner in accordance with the consent;
4. The passage of ninety days after the dissociation of the last limited partner of the limited partnership, unless before the end of the period the limited partnership admits at least one limited partner; or
5. The issuing and filing of a notice of dissolution by the secretary of state under subsection 5 of section 45-10.2-108.

45-10.2-67. (802) Judicial dissolution. On application by a partner the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

45-10.2-68. (803) Winding up.

1. A limited partnership continues after dissolution only for the purpose of winding up its activities.
2. In winding up its activities, the limited partnership:
 - a. May:
 - (1) Amend its certificate of limited partnership to state that the limited partnership is dissolved;
 - (2) Preserve the limited partnership business or property as a going concern for a reasonable time;
 - (3) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
 - (4) Transfer the property of the limited partnership;
 - (5) Settle disputes by mediation or arbitration;
 - (6) File a statement of termination as provided in section 45-10.2-69; and
 - (7) Perform other necessary acts; and
 - b. Shall:
 - (1) Discharge the liabilities of the limited partnership;
 - (2) Settle and close the activities of the limited partnership; and
 - (3) Marshall and distribute the assets of the partnership.
3. If a dissolved limited partnership does not have a general partner, then a person to wind up the activities of the dissolved limited partnership may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:
 - a. Has the powers of a general partner under section 45-10.2-70; and
 - b. Shall promptly amend the certificate of limited partnership to state:
 - (1) That the limited partnership does not have a general partner;
 - (2) The name of the person that has been appointed to wind up the limited partnership; and
 - (3) The street and mailing address of the person.
4. On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the activities of the dissolved limited partnership, if:

- a. A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection 3; or
- b. The applicant establishes other good cause.

45-10.2-69. (203) Statement of termination. A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

1. The name of the limited partnership; and
2. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to subsection 3 or 4 of section 45-10.2-68.

45-10.2-70. (804) Power of general partner and person dissociated as general partner to bind partnership after dissolution.

1. A limited partnership is bound by an act of a general partner after dissolution which:
 - a. Is appropriate for winding up the activities of a limited partnership; or
 - b. Would have bound the limited partnership under section 45-10.2-38 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.
2. A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
 - a. At the time the other party enters into the transaction:
 - (1) Less than two years have passed since the dissociation; and
 - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
 - b. The act:
 - (1) Is appropriate for winding up the activities of the limited partnership; or
 - (2) Would have bound the limited partnership under section 45-10.2-38 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

45-10.2-71. (805) Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.

1. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under subsection 1 of section

45-10.2-70 by an act that is not appropriate for winding up the activities of the partnership, then the general partner is liable:

- a. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - b. If another general partner or a person dissociated as a general partner is liable for the obligation, then to that other general partner or person for any damage caused to that other general partner or person arising from the liability.
2. If a person dissociated as a general partner causes a limited partnership to incur an obligation under subsection 2 of section 45-10.2-70, then the person is liable:
 - a. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - b. If a general partner or another person dissociated as a general partner is liable for the obligation, then to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

45-10.2-72. (806) Known claims against dissolved limited partnership.

1. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.
2. A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:
 - a. Specify the information required to be included in a claim;
 - b. Provide a mailing address to which the claim is to be sent;
 - c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant;
 - d. State that the claim will be barred if not received by the deadline; and
 - e. Unless the limited partnership has been at each moment during its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 45-10.2-40.
3. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and:
 - a. The claim is not received by the specified deadline; or
 - b. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an

action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

45-10.2-73. (807) Other claims against dissolved limited partnerships.

1. A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.
2. The notice must:
 - a. Be published at least once in a newspaper of general circulation in the county in which the principal executive office of the dissolved limited partnership is located or, if it has none in this state, in the county in which the principal executive office of the limited partnership is or was last located;
 - b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;
 - c. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice; and
 - d. Unless the limited partnership has been at each moment during its existence a limited liability limited partnership under chapter 45-23, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 45-10.2-40.
3. If a dissolved limited partnership publishes a notice in accordance with subsection 2, then the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:
 - a. A claimant that did not receive notice in a record under section 45-10.2-72;
 - b. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
 - c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
4. A claim not barred under this section may be enforced:
 - a. Against the dissolved limited partnership, to the extent of its undistributed assets;

- b. If the assets have been distributed in liquidation, then against a partner or transferee to the extent of the proportionate share of the claim of that person or the assets of the limited partnership distributed to the partner or transferee in liquidation, whichever is less, but the total liability of a person for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or
- c. Against any person liable on the claim under section 45-10.2-40.

45-10.2-74. (808) Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under section 45-10.2-72 or 45-10.2-73, then any corresponding claim under section 45-10.2-40 is also barred.

45-10.2-75. (812) Disposition of assets - When contributions required.

- 1. In winding up the activities of a limited partnership, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the obligations to creditors of the limited partnership, including, to the extent permitted by law, partners that are creditors.
- 2. Any surplus remaining after the limited partnership complies with subsection 1 must be paid in cash as a distribution.
- 3. If assets of a limited partnership are insufficient to satisfy all of its obligations under subsection 1, then with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership under chapter 45-23, the following rules apply:
 - a. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 45-10.2-61 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.
 - b. If a person does not contribute the full amount required under subdivision a with respect to an unsatisfied obligation of the limited partnership, then the other persons required to contribute by subdivision a on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.
 - c. If a person does not make the additional contribution required by subdivision b, then further additional contributions are determined and due in the same manner as provided in subdivision b.

4. A person that makes an additional contribution under subdivision b or c of subsection 3 may recover from any person whose failure to contribute under subdivision a or b of subsection 3 necessitated the additional contribution.
 - a. A person may not recover under this subsection more than the amount additionally contributed.
 - b. The liability of a person under this subsection may not exceed the amount the person failed to contribute.
5. The estate of a deceased individual is liable for the obligations of the person under this section.
6. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce the obligation to contribute by a person under subsection 3.

45-10.2-76. (901) Foreign limited partnership - Governing law.

1. The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.
2. A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.
3. A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

45-10.2-77. (905) Foreign limited partnership - Name.

1. A foreign limited partnership whose name does not comply with section 45-10.2-10 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 45-10.2-10. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name shall comply with chapter 45-11. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the alternate name unless the foreign limited partnership is authorized under section 45-10.2-10 to transact business in this state under another name.
2. If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 45-10.2-10, then it may not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

45-10.2-78. Foreign limited partnership - Admission of foreign limited partnership - Transacting business - Obtaining licenses and permits. A foreign limited partnership may not:

1. Transact business in this state or obtain any license or permit required by this state until the foreign limited partnership obtains a certificate of authority from the secretary of state.
2. Transact in this state any business that is prohibited to a limited partnership organized under this chapter.
3. Be denied a certificate of authority because the laws of the jurisdiction of origin of the foreign limited partnership differ from the laws of this state.

45-10.2-79. (902) Foreign limited partnership - Application for certificate of authority.

1. A foreign limited partnership may apply for a certificate of authority to transact business or conduct activities in this state by delivering an application to the secretary of state for filing. The application must state:
 - a. The name of the foreign limited partnership and, if the name does not comply with section 45-10.2-10, then an alternate name adopted pursuant to subsection 1 of section 45-10.2-77;
 - b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
 - c. The general character of the business the foreign limited partnership proposes to transact in this state;
 - d. The street and mailing address of the principal executive office of the foreign limited partnership;
 - e. The name, street address, and mailing address in this state of the initial registered agent of the foreign limited partnership;
 - f. The name, street address, and mailing address of each general partner of the foreign limited partnership; and
 - g. Whether the foreign limited partnership is a foreign limited liability limited partnership.
2. A foreign limited partnership shall deliver with the completed application:
 - a. A certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the publicly filed records of the foreign limited partnership in the state or other jurisdiction under whose law the foreign limited partnership is organized; and
 - b. Proof of the consent of the registered agent to serve in the capacity of registered agent.

45-10.2-80. (904) Foreign limited partnership - Filing of certificate of authority application. If the secretary of state finds an application for a certificate of authority conforms to law and all fees have been paid, then the secretary of state shall:

1. Endorse on the application the word "filed" and the date of filing; and
2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent.

45-10.2-81. Foreign limited partnership - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited partnership is false when made or becomes false due to changed circumstances, or if the foreign limited partnership changes its name or purposes sought in this state, then the foreign limited partnership shall file with the secretary of state an application for an amended certificate of authority signed by an authorized person correcting the statement and, in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.

1. In the case of a dissolution, a foreign limited partnership 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 limited partnership is organized.
2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.
3. A foreign limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an application for amended certificate of authority.

45-10.2-82. Foreign limited partnership - Registered agent - Registered office - Certain reports. A foreign limited partnership authorized to transact business in this state shall:

1. Establish and continuously maintain a registered office in the same manner as provided in section 45-10.2-17;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 45-10.2-17; 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 45-10.2-18.

45-10.2-83. Foreign limited partnership - Merger of foreign limited partnership authorized to transact business in this state. If a foreign limited partnership authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which the foreign limited partnership is organized, and the foreign limited partnership is not the surviving organization, then 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 that is the surviving organization in a merger and which will continue to transact business in this state shall procure a certificate of authority if not previously authorized to transact business.

45-10.2-84. Foreign limited partnership - Conversion of foreign limited partnership authorized to transact business in this state. If a foreign limited partnership authorized to transact business in this state converts to another organization permitted by the laws of the jurisdiction under which the foreign limited partnership is organized, then the newly created organization resulting from the conversion shall, within thirty days after the conversion becomes effective, file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota laws applicable to the converted organization.

45-10.2-85. Foreign limited partnership - Cancellation of certificate of authority - Effect of failure to have certificate.

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 45-10.2-27.
2. A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.
3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.
4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason that the foreign limited partnership has transacted business in this state without a certificate of authority.
5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, then it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.
6. A foreign limited partnership that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without the certificate of authority in an amount equal to all

fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly obtained a certificate of authority, 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.

7. A foreign limited partnership that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not obtained a certificate of authority is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
8. The civil penalties set forth in subsection 7 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 partnership or any of the general partners or agents of the foreign limited partnership 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 partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership 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 partnership has otherwise complied with the provisions of this chapter.

45-10.2-86. (903) Foreign limited partnership - Activities not constituting transacting business.

1. Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this chapter include:

 - a. Maintaining, defending, and settling an action or proceeding;
 - b. Holding a meeting of its partners or carrying on any other activity concerning its internal affairs;
 - c. Maintaining accounts in financial institutions;
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of the securities of the foreign limited partnership or maintaining trustees or depositories with respect to those securities;
 - e. Selling through independent contractors;
 - f. Soliciting or obtaining orders, whether by mail or electronic means 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, or security interests in real or personal property;

- h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - i. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and
 - j. Transacting business in interstate commerce.
- 2. For purposes of this section, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.
- 3. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.

- 1. The certificate of authority of a foreign limited partnership 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 partnership has failed to:
 - (1) Maintain a registered office as required by this chapter;
 - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
 - (3) File a report upon any change in the address of its principal executive office;
 - (4) Appoint and maintain a registered agent as required by this chapter;
 - (5) File a report upon any change in the name or business address of the registered agent; or
 - (6) File in the office of the secretary of state any amendment to its application for certificate of authority as specified in section 45-10.2-81; or
 - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.
- 2. Except for the annual report for which the certificate of authority may be revoked as provided in section 45-10.2-108, no certificate of authority may be revoked by the secretary of state unless:
 - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered office in this

state or if the foreign limited partnership 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 partnership has failed to file the report of change regarding the registered office or the registered agent, to register a general partner as required by section 45-10.2-16, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice:
 - a. The authority of the foreign limited partnership to transact business in this state ceases; and
 - b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

45-10.2-88. (908) Foreign limited partnership - Action by attorney general. The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

45-10.2-89. (1001) Direct action by partner.

1. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting to the activities of the partnership, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement of this chapter or arising independently of the partnership relationship.
2. A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.
3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

45-10.2-90. (1002) Derivative action. A partner may maintain a derivative action to enforce a right of a limited partnership if:

1. The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
2. A demand would be futile.

45-10.2-91. (1003) Proper plaintiff. A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

1. That was a partner when the conduct giving rise to the action occurred; or
2. Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

45-10.2-92. (1004) Pleading. In a derivative action, the complaint must state with particularity:

1. The date and content of the demand of the plaintiff and the response to the demand by the general partners; or
2. Why demand should be excused as futile.

45-10.2-93. (1005) Proceeds and expenses.

1. Except as otherwise provided in subsection 2:
 - a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and
 - b. If the derivative plaintiff receives any proceeds, then the derivative plaintiff shall immediately remit them to the limited partnership.
2. If a derivative action is successful in whole or in part, then the court may award the plaintiff reasonable expenses, including reasonable fees for services of an attorney, from the recovery of the limited partnership.

45-10.2-94. (1102) Conversion.

1. An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization other than a general partnership pursuant to this section and sections 45-10.2-95 through 45-10.2-99 and a plan of conversion, if:
 - a. The governing statute of the other organization authorizes the conversion;
 - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 45-10.2-94 through 45-10.2-99, unless the context clearly indicates a different meaning is intended:
 - a. "Certificate of creation" means:
 - (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;

- (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
 - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under this chapter;
 - (4) The filed registration if the converting organization is a limited liability partnership deemed to be established under chapter 45-22; or
 - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
 - b. "Date of origin" means the date on which:
 - (1) A corporation that is:
 - (a) The converting organization was incorporated; or
 - (b) The converted organization is deemed to be incorporated;
 - (2) A limited liability company that is:
 - (a) The converting organization was organized; or
 - (b) The converted organization is deemed to be organized;
 - (3) A general partnership that is the converting organization was formed;
 - (4) A limited partnership that is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed;
 - (5) A limited liability partnership that is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed; and
 - (6) A limited liability limited partnership that is:
 - (a) The converting organization was formed; or
 - (b) The converted organization is deemed to be formed.
 - c. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.

- d. "General partnership" shall mean an organization formed under chapters 45-13 through 45-21.
- e. "Organizational records" means for an organization that is:
 - (1) A corporation, its articles of incorporation and bylaws;
 - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member control agreement;
 - (3) A limited partnership, its partnership agreement;
 - (4) A limited liability partnership, its partnership agreement; or
 - (5) A limited liability limited partnership, its partnership agreement.
- f. "Originating record" means for an organization that is:
 - (1) A corporation, its articles of incorporation;
 - (2) A limited liability company, its articles of organization;
 - (3) A limited partnership, its certificate of limited partnership;
 - (4) A limited liability partnership, its registration; or
 - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

45-10.2-95. Plan of conversion. A plan of conversion must be in a record and must contain:

- 1. The name and form of the converting organization before conversion;
- 2. The name and form of the converted organization after conversion;
- 3. The terms and conditions of the conversion;
- 4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
- 5. The organizational records of the converted organization; and
- 6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

45-10.2-96. Plan of conversion approval and amendment.

- 1. If the converting organization is a limited partnership, then:
 - a. Subject to section 45-10.2-104, a plan of conversion must be consented to by all of the partners of a converting limited partnership.

- b. Subject to section 45-10.2-104 and any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting limited partnership may amend the planned conversion:
 - (1) As provided in the plan; and
 - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
- 2. If the converting organization is not a limited partnership, then the approval and the amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

45-10.2-97. Articles of conversion.

- 1. Upon receiving the approval required by section 45-10.2-96, articles of conversion must be prepared in a record that must contain:
 - a. A statement that the converting organization is being converted into another organization, including:
 - (1) The name of the converting organization immediately before the filing of the articles of conversion;
 - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
 - (3) The form of organization that the converted organization will be; and
 - (4) The jurisdiction of the governing statute of the converted organization;
 - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-10.2-96;
 - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
 - d. The plan of conversion without the organizational records;
 - e. A copy of the originating record of the converted organization; and
 - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 45-10.2-99.
- 2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
 - a. If the converted organization is a domestic organization, then:

- (1) The filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
 - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
- b. If the converted organization is a foreign organization:
 - (1) That is transacting business or conducting activities in this state, then:
 - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
 - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
 - (2) That is not transacting business or conducting activities in this state, then upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

45-10.2-98. Abandonment of conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:
 - a. If the converting organization is a limited partnership, then subject to section 45-10.2-104 and any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting limited partnership may abandon the planned conversion:
 - (1) As provided in the plan; and
 - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.

- b. If the converting organization is not a limited partnership, then the abandonment of the plan of conversion must comply with its governing statute.
- 2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
 - a. The name of the converting organization;
 - b. The provision of this section under which the plan is abandoned; and
 - c. If the plan is abandoned:
 - (1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or
 - (2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

45-10.2-99. Effective date of conversion - Effect.

- 1. A conversion is effective when the filing requirements of subsection 2 of section 45-10.2-97 have been fulfilled or on a later date specified in the articles of conversion.
- 2. With respect to the effect of conversion on the converting organization and on the converted organization:
 - a. An organization that has been converted as provided in sections 45-10.2-94 through 45-10.2-99 is for all purposes the same entity that existed before the conversion.
 - b. Upon a conversion becoming effective:
 - (1) If the converted organization:
 - (a) Is a limited partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited partnership formed under this chapter; or
 - (b) Is not a limited partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
 - (2) All property owned by the converting organization remains vested in the converted organization;
 - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

- (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
 - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;
 - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
 - (7) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of sections 45-10.2-66 through 45-10.2-75.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

45-10.2-100. (1106) Merger.

1. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 45-10.2-101 through 45-10.2-103 and a plan of merger, if:
 - a. The governing statute of each of the other organizations authorizes the merger;
 - b. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
 - c. Each of the other organizations complies with its governing statute in effecting the merger.
2. For the purposes of sections 45-10.2-100 through 45-10.2-103, "originating record" means for an organization that is:
 - a. A corporation, its articles of incorporation;
 - b. A limited liability company, its articles of organization;
 - c. A limited partnership, its certificate of limited partnership;
 - d. A limited liability partnership, its registration; and

- e. A limited liability limited partnership, its certificate of limited liability limited partnership.
- 3. A plan of merger must be in a record and must include:
 - a. The name and form of each constituent organization;
 - b. The name and form of the surviving organization and:
 - (1) If the surviving organization is to be created by the merger, then:
 - (a) A statement to that effect; and
 - (b) Its organizational record; or
 - (2) If the surviving organization is not to be created by the merger, then any amendments to be made to the organizational record of the surviving organization;
 - c. The terms and conditions of the merger;
 - d. The manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and
 - e. Any other provisions with respect to the proposed merger that are deemed to be necessary or desirable.

45-10.2-101. (1107) Plan of merger approval - Amendment and abandonment.

- 1. Subject to section 45-10.2-104, a plan of merger must be consented to by all the partners of a constituent limited partnership.
- 2. Subject to section 45-10.2-104 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 45-10.2-102, a constituent limited partnership may amend the plan or abandon the planned merger:
 - a. As provided in the plan; and
 - b. Except as prohibited by the plan, with the same consent as was required to approve the plan.

45-10.2-102. (1108) Articles of merger.

- 1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of:
 - a. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and
 - b. Each other preexisting constituent organization, by an authorized representative.

2. The articles of merger must be accompanied by the plan of merger without organizational records and must include:

 - a. With respect to each constituent organization:

 - (1) Its name;
 - (2) Its form;
 - (3) The jurisdiction of its governing statute;
 - (4) A statement that the merger complies with its governing statute; and
 - (5) Any additional information required by the governing statute of any constituent organization.
 - b. With respect to the surviving organization:

 - (1) Its name;
 - (2) Its form;
 - (3) The jurisdiction of its governing statute;
 - (4) The date the merger is effective under its governing statute;
 - (5) If it is created by the merger, then:

 - (a) A statement to that effect; and
 - (b) The originating record that creates the organization;
 - (6) If it preexists the merger, then any amendments to its originating record provided for in the plan of merger; or
 - (7) If it is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office that the secretary of state may use for the purposes of subsection 2 of section 45-10.2-103.
3. The articles of merger must be filed in the office of the secretary of state.
4. A merger becomes effective under this chapter:

 - a. If the surviving organization is a limited partnership, upon the later of:

 - (1) Compliance with subsection 3; or
 - (2) Subject to subsection 3 of section 45-10.2-27, as specified in the articles of merger; or
 - b. If the surviving organization is not a limited partnership, then as provided by the governing statute of the surviving organization.

45-10.2-103. (1109) Effect of merger.

1. When a merger becomes effective:
 - a. The surviving organization continues or comes into existence;
 - b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
 - c. All property owned by each constituent organization that ceases to exist vests in the surviving organization;
 - d. All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
 - e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued by the surviving organization as if the merger had not occurred;
 - f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
 - g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;
 - h. Except as otherwise agreed, if a constituent limited partnership ceases to exist, then the merger does not dissolve the limited partnership for the purposes of sections 45-10.2-66 through 45-10.2-75;
 - i. If the surviving organization is created by the merger and:
 - (1) If it is a limited partnership, then the certificate of limited partnership becomes effective; or
 - (2) If it is an organization other than a limited partnership, then the organizational record that creates the organization becomes effective; and
 - j. If the surviving organization preexists the merger, then any amendments provided for in the articles of merger for the organizational record that created the organization become effective.
2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection.

45-10.2-104. (1110) Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership (LLLP) status.

1. If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, then approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:
 - a. The partnership agreement of the limited partnership provides for the approval of the conversion or merger with the consent of fewer than all the partners; and
 - b. The partner has consented to the provision of the partnership agreement.
2. An amendment to a certificate of limited partnership which converts the limited partnership to a limited liability limited partnership is ineffective without the consent of each general partner unless:
 - a. The partnership agreement of the limited partnership provides for the conversion with the consent of less than all the general partners; and
 - b. Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.
3. A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

45-10.2-105. (1111) Liability of general partner after conversion or merger.

1. A conversion or merger under this chapter does not discharge any liability under sections 45-10.2-40 and 45-10.2-61 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:
 - a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
 - b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and
 - c. If a person is required to pay any amount under this subsection, then:
 - (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-10.2-40 when the obligation was incurred and has not been released from the obligation under section 45-10.2-61; and

- (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred.
2. In addition to any other liability provided by law:
 - a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
 - (1) Does not have notice of the conversion or merger; and
 - (2) Reasonably believes that:
 - (a) The converted or surviving organization or business is the converting or constituent limited partnership;
 - (b) The converting or constituent limited partnership is not a limited liability limited partnership; and
 - (c) The person is a general partner in the converting or constituent limited partnership; and
 - b. A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:
 - (1) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and
 - (2) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
 - (a) Does not have notice of the dissociation;
 - (b) Does not have notice of the conversion or merger; and
 - (c) Reasonably believes that:
 - [1] The converted or surviving organization or business is the converting or constituent limited partnership;
 - [2] The converting or constituent limited partnership is not a limited liability limited partnership; and

- [3] The person is a general partner in the converting or constituent limited partnership.

45-10.2-106. (1112) Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.

1. An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
 - a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 45-10.2-38; and
 - b. At the time the third party enters into the transaction, the third party:
 - (1) Does not have notice of the conversion or merger; and
 - (2) Reasonably believes that:
 - (a) The converted or surviving organization or business is the converting or constituent limited partnership; and
 - (b) The person is a general partner in the converting or constituent limited partnership.
2. An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
 - a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 45-10.2-38 if the person had been a general partner; and
 - b. At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:
 - (1) Does not have notice of the dissociation;
 - (2) Does not have notice of the conversion or merger; and
 - (3) Reasonably believes that:
 - (a) The converted or surviving organization or business is the converting or constituent limited partnership; and
 - (b) The person is a general partner in the converting or constituent limited partnership.
3. If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection 1 or 2, then the person is liable:

- a. To the converted or surviving organization for any damage caused to the organization arising from the obligation; and
- b. If another person is liable for the obligation, then to that other person for any damage caused to that other person arising from the liability.

45-10.2-107. Service of process on a limited partnership or foreign limited partnership and on nonresident general partners.

1. The registered agent must be an agent of the limited partnership, the foreign limited partnership, and any nonresident general partner upon whom any process, notice, or demand required or permitted by law to be served on the limited partnership, foreign limited partnership, or general partner may be served.
 - a. When a foreign limited partnership transacts business without a certificate of authority or when the certificate of authority of a foreign limited partnership is suspended or revoked, the secretary of state is an agent of the foreign limited partnership for service of process, notice, or demand.
 - b. Acceptance of a general partnership interest in a limited partnership or foreign limited partnership 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 on a limited partnership or foreign limited partnership may be served:
 - a. On the registered agent;
 - b. On a general partner of the limited partnership or foreign limited partnership;
 - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
 - d. On the secretary of state as provided in this section.
3. 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 partnership or foreign limited partnership cannot be found at the principal place of business in this state, then the secretary of state is an agent of the limited partnership or foreign limited partnership on whom the process, notice, or demand may be served.
 - a. Service on the secretary of state:
 - (1) Must be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
 - (2) Must include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.

- (3) Is deemed personal service on the limited partnership or foreign limited partnership and may be made by filing with the secretary of state:
 - (a) Three copies of the process, notice, or demand; and
 - (b) The fees provided in section 45-10.2-109.
 - (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
 - b. The secretary of state shall immediately forward, by registered mail addressed to the limited partnership or foreign limited partnership at its registered office or principal place of business in this state, a copy of the process, notice, or demand.
- 4. Process, notice, or demand may be served on a dissolved limited partnership as provided in this subsection. The court shall determine if service is proper.
 - a. If a limited partnership has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made as provided in subsection 2 as long as claims are not finally barred under section 45-10.2-73.
 - b. If a limited partnership has been involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108, then service may be made as provided in subsection 3.
- 5. 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 the process, notice, or demand.
- 6. 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 partnership or foreign limited partnership in any other manner permitted by law.

45-10.2-108. Secretary of state - Annual report of limited partnership and foreign limited partnership.

- 1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:
 - a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.
 - b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the registered agent of the limited partnership or foreign limited partnership in this state at that address.
 - c. The address of the principal executive office of the limited partnership or foreign limited partnership.

- d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
 - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
 - 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as provided in subsection 40 of section 45-10.2-02 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.
 - 3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
 - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
 - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
 - (1) If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
 - (2) If the report is filed before the deadlines provided in this subsection, then 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.
 - 4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing to file an annual report that the certificate of limited partnership or certificate of authority of a foreign limited partnership is not in good standing and that the certificate of the limited partnership or the certificate of authority of the foreign limited partnership may be dissolved or revoked pursuant to subsection 5.
 - a. The secretary of state must mail notice of dissolution or revocation to the last registered agent at the last registered office of record.

- b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, then the secretary of state will restore the certificate or certificate of authority of the limited partnership or foreign limited partnership to good standing.
- 5. A limited partnership that does not file an annual report, within six months 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 dissolution of the certificate of limited partnership on the records of the secretary of state and shall give notice of the action to the dissolved limited partnership.
 - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record of the limited partnership.
- 6. A foreign limited partnership that does not file an annual report, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
 - a. The secretary of state shall note the revocation of the certificate of authority of the foreign limited partnership on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
 - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record of the foreign limited partnership.
- 7. A limited partnership that is dissolved for failure to file an annual report, or a certificate of authority of a foreign limited partnership that is forfeited for 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 provided in section 45-10.2-109. 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.

45-10.2-109. Secretary of state - Fees for filing records. The secretary of state shall charge and collect for:

- 1. Filing a certificate of limited partnership, one hundred dollars.
- 2. Filing a limited partnership amendment, forty dollars.
- 3. Filing articles of conversion of a limited partnership, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees

provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

4. Filing abandonment of conversion, fifty dollars.
5. Filing limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited partnership statement of correction, forty dollars.
8. Filing a limited partnership dissolution, twenty-five dollars.
9. Filing a limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of name, ten dollars.
11. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited partnership name, ten dollars.
13. Filing a consent to use a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
15. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.
16. Filing a consent of registered agent to serve in the capacity of registered agent, ten dollars.
17. Filing a resignation as registered agent, ten dollars.
18. Filing a certificate of authority of foreign limited partnership, one hundred dollars.
19. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
20. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
21. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
22. Filing a certified statement of merger of foreign limited partnership, fifty dollars.
23. Filing a certified statement of conversion of foreign limited partnership, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees

- provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
- b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
24. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
25. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
- (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
- (2) After the dissolution of the limited partnership or the revocation of the certificate of authority of a foreign limited partnership, the reinstatement fee of one hundred dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108, or the annual report lacks sufficient payment as required by this subsection.
26. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
27. Filing any process, notice, or demand for service, twenty-five dollars.
- a. Furnishing a certificate of existence or authorization:
- (1) Fifteen dollars; and
- (2) Five dollars for a search of records.
- b. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:
- (1) One dollar for every four pages or fraction;
- (2) Fifteen dollars for the certificate and affixing the seal thereto; and
- (3) Five dollars for a search of records.

45-10.2-110. Secretary of state - Duties. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All records filed with the secretary of state under

this chapter must be retained in that office until the records have been committed to microcopy, at which time the records may be destroyed.

45-10.2-111. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited partnership or foreign limited 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. Every answer 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, then the interrogatory must be answered by that individual;
 - (2) To a domestic limited partnership, then the interrogatory must be answered by a managing partner; or
 - (3) To a foreign limited partnership, then the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited partnership.
 - c. The secretary of state need not file any record to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the record 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 that disclose a violation of this chapter.
 - e. Each general partner of a limited partnership or a resident partner or designated partner of a foreign limited 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 fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the

person that delivered the record, specifying the reasons for rejection. Within thirty days after the service of the notice of denial, the limited partnership or the foreign limited partnership as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state. The court shall try the matter de novo. The court shall 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 involuntarily dissolves a limited partnership pursuant to section 45-10.2-108 or if the secretary of state revokes the certificate of authority of any foreign limited partnership and if reinstatement as provided in section 45-10.2-108 was denied for any reason, then the limited partnership or the foreign limited partnership, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of that court a petition including:
 - a. A copy of the certificate of limited partnership and a copy of the notice of dissolution given by the secretary of state; or
 - b. A copy of the certificate of authority of the foreign limited partnership 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 sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

5. If the court order sought is one for reinstatement of a limited partnership that has been dissolved as provided in subsection 5 of section 45-10.2-108, or for reinstatement of the certificate of authority of a foreign limited partnership that has been revoked as provided in subsection 6 of section 45-10.2-108, then, together with any other actions the court deems proper, any such order which orders the reinstatement of the limited partnership or the reinstatement of the certificate of authority of a foreign limited partnership shall require the limited partnership or foreign limited partnership to:
 - a. File all past-due annual reports;
 - b. Pay the fees to the secretary of state for each annual report as provided in subsection 25 of section 45-10.2-109; and
 - c. Pay the reinstatement fee to the secretary of state as provided in subsection 25 of section 45-10.2-109.

45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.

1. All copies of records 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 partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records 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.

45-10.2-113. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any record is released to the public.

45-10.2-114. Secretary of state - Forms to be furnished by the secretary of state. Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other records to be filed in the office of the secretary of state. However, the use of these records, unless otherwise specifically required by law, is not mandatory.

45-10.2-115. Audit reports and audit of limited partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited partnership or foreign limited 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 partnership or foreign limited 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 partnership or foreign limited 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 partnership or foreign limited partnership required to submit an annual report under this section.

45-10.2-116. (1201) Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

45-10.2-117. (1203) Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but this chapter does not modify, limit, or supersede section 101 of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

SECTION 7. AMENDMENT. Subsection 2 of section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited

partnership transacting business under a name filed under chapter ~~45-10-4~~ 45-10.2 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.

¹⁹³ **SECTION 8. AMENDMENT.** Subsections 1 and 5 of section 45-13-04.1 of the North Dakota Century Code are amended and reenacted as follows:

1. A partnership name filed in a statement under section 45-13-05:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. May not contain a word or phrase indicating or implying the partnership may not be organized under this chapter;
 - c. May not contain a word or phrase indicating or implying the partnership is organized for a purpose other than a legal business purpose for which a partnership may be organized under this chapter;
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; and
 - 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 filed with the statement is a ~~document~~ record which complies with subsection 3 of:
 - (a) Another partnership;
 - (b) A limited liability company;
 - (c) A corporation;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or

¹⁹³ Section 45-13-04.1 was also amended by section 124 of House Bill No. 1391, chapter 100.

- (4) A trade name registered in the manner provided in chapter 47-25.
5. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:
- a. Is formed 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 ~~45-10.1-03~~ 45-10.2-11;
 - 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.

¹⁹⁴ **SECTION 9. AMENDMENT.** Subsection 3 of section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Limited partnership" means a limited partnership created under chapter ~~45-10.4~~ 45-10.2, predecessor law, or comparable law of another jurisdiction.

¹⁹⁵ **SECTION 10. AMENDMENT.** Subsection 5 of section 45-21-02 of the North Dakota Century Code is amended and reenacted as follows:

5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter ~~45-10.4~~ 45-10.2.

¹⁹⁴ Section 45-21-01 was also amended by section 127 of House Bill No. 1391, chapter 100.

¹⁹⁵ Section 45-21-02 was also amended by section 128 of House Bill No. 1391, chapter 100.

¹⁹⁶ **SECTION 11. AMENDMENT.** Subsections 1 and 5 of section 45-22-04 of the North Dakota Century Code are amended and reenacted as follows:

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:
 - (1) The words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; or
 - (2) In the case of a foreign limited liability partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.
 - c. May not contain a word or phrase indicating or implying the limited liability partnership may not be formed under this chapter.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase indicating or implying the limited liability partnership is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.
 - 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 registration a document that complies with subsection 3 ~~of this section~~, of:
 - (a) Another limited liability partnership;
 - (b) A corporation;
 - (c) A limited liability company;
 - (d) A limited partnership; or
 - (e) A limited liability limited partnership;

¹⁹⁶ Section 45-22-04 was also amended by section 139 of House Bill No. 1391, chapter 100.

- (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~~ 45-10.2-11, 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.
- g. Need not be filed as provided in chapter 45-11 except if transacting business under a name other than the name as registered under this chapter.
- 5. A limited liability partnership that is the surviving organization in a merger with one or more 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 organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
 - a. Is 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~~ 45-10.2-11, 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.

¹⁹⁷ **SECTION 12. AMENDMENT.** Subsections 11 and 15 of section 45-23-01 of the North Dakota Century Code are amended and reenacted as follows:

- 11. "Foreign limited partnership" means a limited partnership that is:
 - a. Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter ~~45-10.1~~ 45-10.2; and
 - b. Authorized to transact business in this state as provided in chapter ~~45-10.1~~ 45-10.2.

¹⁹⁷ Section 45-23-01 was also amended by section 147 of House Bill No. 1391, chapter 100.

15. "Limited partnership" means a limited partnership formed under chapter ~~45-10-1~~ 45-10.2.

¹⁹⁸ **SECTION 13. AMENDMENT.** Section 45-23-02 of the North Dakota Century Code is amended and reenacted as follows:

45-23-02. Applicability of chapter ~~45-10-1~~ 45-10.2.

1. In any case not provided for in this chapter, chapter ~~45-10-1~~ 45-10.2 governs.
2. If applying chapter ~~45-10-1~~ 45-10.2 to a limited liability limited partnership:
 - a. All references in chapter ~~45-10-1~~ 45-10.2 to "limited partnership" refer to "limited liability limited partnership"; and
 - b. All references in chapter ~~45-10-1~~ 45-10.2 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter ~~45-10-1~~ 45-10.2, that provision of this chapter takes precedence.

¹⁹⁹ **SECTION 14. AMENDMENT.** Subsections 1 and 5 of section 45-23-03 of the North Dakota Century Code are amended and reenacted as follows:

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
 - a. Must be in the English language or in another language expressed in English letters or characters.
 - b. Must contain:
 - (1) Without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state; or
 - (2) In the case of a foreign limited liability limited partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.
 - c. May not contain the name of a limited partner unless:
 - (1) The name is also the name of a general partner; or

¹⁹⁸ Section 45-23-02 was also amended by section 148 of House Bill No. 1391, chapter 100.

¹⁹⁹ Section 45-23-03 was also amended by section 149 of House Bill No. 1391, chapter 100.

- (2) The business of the limited liability limited partnership was carried on under that name before the admission of that limited partner.
- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.
- e. May not contain a word or phrase indicating or implying the limited liability limited partnership may not be organized under this chapter.
- f. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized for a purpose other than a legal business purpose for which a limited liability limited partnership may be organized under this chapter.
- g. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized other than for a purpose stated in the certificate of the limited liability 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 certificate a ~~document~~ record in compliance with subsection 3, of:
 - (a) Another limited liability limited partnership;
 - (b) A limited partnership;
 - (c) A corporation;
 - (d) A limited liability company; or
 - (e) A limited liability partnership;
 - (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~~ 45-10.2-11, 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.
- 5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:

- a. Is 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~~ 45-10.2-11, 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.

²⁰⁰ **SECTION 15. AMENDMENT.** Section 45-23-04 of the North Dakota Century Code is amended and reenacted as follows:

45-23-04. Limited liability limited partnership formation.

1. If a limited partnership does not exist, a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:
 - a. That complies with the name requirements in section 45-23-03;
 - b. That contains a statement that limited liability limited partnership status is elected; and
 - c. That otherwise conforms to the requirements of section ~~45-10.1-08~~ 45-10.2-23.
2. An existing limited partnership:
 - a. May elect to become a limited liability limited partnership:
 - (1) By obtaining approval to be governed by this chapter by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;
 - (2) By complying with the name requirements of section 45-23-03; and
 - (3) By filing with the secretary of state, together with the fees provided in sections ~~45-10.1-15~~ 45-10.2-109 and 45-23-08, a ~~document~~ record that is designated as both an amended

²⁰⁰ Section 45-23-04 was also amended by section 150 of House Bill No. 1391, chapter 100.

certificate of limited partnership and a certificate of limited liability limited partnership which:

- (a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;
 - (b) Contains a statement that limited liability limited partnership status is elected; and
 - (c) Otherwise conforms to the requirements of section ~~45-10.1-09~~ 45-10.2-24.
- b. Continues to be the same entity in existence before the filing with the secretary of state pursuant to this section.

²⁰¹ **SECTION 16. AMENDMENT.** Section 45-23-07 of the North Dakota Century Code is amended and reenacted as follows:

45-23-07. Foreign limited partnership - Adopting limited liability limited partnership status. An existing foreign limited partnership authorized to transact business in this state pursuant to section ~~45-10.1-52~~ 45-10.2-78 which subsequently adopts and maintains limited liability limited partnership status in the jurisdiction of origin shall file with the secretary of state, together with the fees required in sections ~~45-10.1-45~~ 45-10.2-109 and 45-23-08:

1. A ~~document record~~ designated as both an amended foreign limited partnership registration as required by section ~~45-10.1-55~~ 45-10.2-81 and a foreign limited liability limited partnership registration as required by section ~~45-10.1-52~~ 45-10.2-79; and
2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin.

²⁰² **SECTION 17. AMENDMENT.** Subsection 18 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

18. Filing an annual report of limited liability limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - a. After the date ~~prescribed~~ provided in subsection 3 of section ~~45-10.1-14~~ 45-10.2-108, twenty dollars; and
 - b. After the ~~termination~~ dissolution of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.

²⁰¹ Section 45-23-07 was also amended by section 153 of House Bill No. 1391, chapter 100.

²⁰² Section 45-23-08 was also amended by section 154 of House Bill No. 1391, chapter 100.

²⁰³ **SECTION 18. AMENDMENT.** Subsection 3 of section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

3. At the time of filing the application to become an approved vendor, the applicant, if organized as a corporation, limited liability company, limited liability partnership, or limited partnership, must be properly and currently registered with the secretary of state according to its type of business organization as a corporation under chapter 10-19.1, a limited liability company under chapter 10-32, a limited liability partnership under chapter 45-22, or a limited partnership under chapter ~~45-10.1~~ 45-10.2. Any exemptions to registration under the above chapters that would otherwise apply to those entities organized as such do not apply to this section and registration must be made for the applicant to become an approved vendor. Applicants for approved vendor status using a trade name or a fictitious partnership name must be in full compliance with chapter 47-25 or 45-11 at the time of making the application. Whenever any registration required by this section is canceled, revoked, or not renewed, the vendor ceases to be an approved vendor.

By signing and filing the application, the vendor applicant appoints the secretary of state as its true and lawful agent for service of process in this state upon whom may be served all lawful process in any action or proceeding against the vendor if the vendor or its registered agent cannot be found for service of process in this state. The signed application is written evidence of the applicant's consent that any process served against the applicant that is so served upon the secretary of state is of the same legal force and effect as if served upon the applicant personally within this state. Within ten days after service of the summons upon the secretary of state pursuant to this subsection, notice of the service with the summons and complaint in the action must be sent to the defendant vendor at the vendor's last-known address by certified mail with return receipt requested and proof of mailing must be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section showing the day and hour of service. When service of process is made as provided in this subsection, the court, before entering a default judgment, or at any stage of the proceeding, may order a continuance as may be necessary to afford the defendant vendor reasonable opportunity to defend any action pending against the vendor.

SECTION 19. REPEAL. Chapter 45-10.1 and section 45-12-01 of the North Dakota Century Code are repealed.

Approved April 11, 2005
Filed April 12, 2005

²⁰³ Section 54-44.4-09 was also amended by section 2 of House Bill No. 1091, chapter 381, and section 2 of House Bill No. 1341, chapter 528.

CHAPTER 385

HOUSE BILL NO. 1253

(Representatives Onstad, Maragos, S. Meyer)
(Senator Syverson)

PARTNERSHIP AGRICULTURAL LAND OWNERSHIP

AN ACT to create and enact a new subdivision to subsection 1 of section 45-22-21.1 of the North Dakota Century Code, relating to the registration of limited liability partnerships; and to amend and reenact subsection 3 of section 45-22-03 of the North Dakota Century Code, relating to the registration of limited liability partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, 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) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
 - (4) The address of the principal executive office of the domestic limited liability partnership.
 - ~~(4)~~ (5) The address of the registered office of the domestic limited liability partnership and the name of the registered agent at that address.
 - ~~(5)~~ (6) The name and address of each managing partner.
 - ~~(6)~~ (7) A statement that the partnership elects to be a limited liability partnership.
 - ~~(7)~~ (8) A deferred effective date, if any.
 - 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 the foreign limited liability partnership proposes to transact business in this state.
 - (2) The jurisdiction of origin.

- (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
 - (4) The nature of the business to be transacted in this state.
 - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
 - (6) The address of the principal executive office of the foreign limited liability partnership.
 - ~~(6)~~ (7) The address of the registered office of the foreign limited liability partnership and the name of the foreign limited liability partnership's registered agent at that address.
 - ~~(7)~~ (8) The name and address of each managing partner.
 - ~~(8)~~ (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the 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.

²⁰⁴ **SECTION 2.** A new subdivision to subsection 1 of section 45-22-21.1 of the North Dakota Century Code is created and enacted as follows:

If the limited liability partnership or foreign limited liability partnership owns or leases land that is used for farming or ranching in this state, a statement listing:

- (1) The names and addresses of all partners; and
- (2) The acreage [hectarage] and location listed by section, township, range, and county of all land in this state owned or leased by the limited liability partnership or foreign limited liability partnership.

Approved March 14, 2005
Filed March 14, 2005

²⁰⁴ Section 45-22-21.1 was also amended by section 142 of House Bill No. 1391, chapter 100.

PROPERTY

CHAPTER 386

SENATE BILL NO. 2239

(Senators Erbele, Klein, Seymour)
(Representatives Brandenburg, S. Kelsh, Kretschmar)

WIND OPTION AGREEMENTS, EASEMENTS, AND LEASES

AN ACT to create and enact a new section to chapter 9-01, three new sections to chapter 47-05, and a new section to chapter 47-16 of the North Dakota Century Code, relating to wind option agreements, easements, and leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 9-01 of the North Dakota Century Code is created and enacted as follows:

Wind option agreement - Definition - Termination. A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms. A wind option agreement is void and terminates if development to produce energy from wind power has not occurred on the property that is the subject of the agreement within five years after the wind option agreement commences.

SECTION 2. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Wind easement - Definition. For purposes of sections 3 and 4 of this Act, the term wind easement means a right, whether stated in the form of a restriction, easement, covenant, or condition, in a deed, will, or other instrument executed by or on behalf of an owner of land or airspace for the purpose of ensuring adequate exposure of a wind power system to the winds.

SECTION 3. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Wind easements - Creation - Term - Development required. A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. However, the easement is void if no development to produce energy from wind power associated with the easement has occurred within five years after the easement is created.

SECTION 4. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of wind energy rights limited. Except for a wind easement created under section 3 of this Act, an interest in a resource located on a tract of land and associated with the production of energy for wind power on the tract of land may not be severed from the surface estate.

SECTION 5. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Wind energy leases - Termination. A lease for wind energy purposes is void and terminates if development to produce energy from wind power has not occurred on the leasehold within five years after the lease commences.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 387

SENATE BILL NO. 2322

(Senator Wardner)
(Representatives Kreidt, Onstad)

AGRICULTURAL PROPERTY ACQUISITION LIMITATIONS

AN ACT to amend and reenact section 47-10.1-02 of the North Dakota Century Code, relating to restrictions on the acquisition of agricultural land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

47-10.1-02. Restriction on acquisition - Exceptions. ~~A person~~

1. An individual who is not a citizen of the United States or, a citizen of Canada, except or a permanent resident alien of the United States, may not acquire directly or indirectly any interest in agricultural land unless:
 - a. The individual is an alien entitled to enter the United States under the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the individual is a national, solely to develop and direct the operations of an enterprise in which the individual has invested or to direct the operations of an enterprise in which the individual is actively in the process of investing a substantial amount of capital;
 - b. The individual resides in this state for at least ten months out of every year;
 - c. The individual actively participates in the operation of the agricultural land;
 - d. The agricultural landholding does not exceed six hundred forty acres [258.99 hectares]; and
 - e. The agricultural landholding includes a dairy operation.
2. An individual who is permitted to acquire an interest in agricultural land under subsection 1 shall:
 - a. Notify the agriculture commissioner of any land acquisition within thirty days of the acquisition; and
 - b. Annually provide the agriculture commissioner with a list of all addresses at which the individual resided during the previous year and the dates during which the individual resided at each address.

3. If an individual ceases to meet the exceptions provided for in subsection 1, the individual shall dispose of the agricultural land within twenty-four months.
4. A partnership, limited partnership, limited liability company, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States.
5. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim ~~shall~~ must be disposed of within three years after acquiring ownership; if the acquisition would otherwise violate this section.
6. This section does not apply to a foreign corporation or a foreign limited liability company which acquires agricultural land for use as an industrial site when construction contracts are entered into by the corporation or limited liability company within one hundred fifty days after acquisition of the land; provided, that this exception ~~shall~~ applies only ~~apply~~ to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation or a foreign limited liability company which owns agricultural land for industrial purposes but which discontinues using the land for industrial purposes shall dispose of the land as provided by chapter 10-06.1. A foreign corporation or foreign limited liability company shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land.
7. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 388**SENATE BILL NO. 2161**

(Senators Krebsbach, Wardner)
(Representatives Froseth, Mueller)

AGRICULTURAL LAND TRANSFERS

AN ACT to repeal section 47-10.1-03 of the North Dakota Century Code, relating to the prohibition of recording instruments transferring title to agricultural land to an alien or certain business entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 47-10.1-03 of the North Dakota Century Code is repealed.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 389

SENATE BILL NO. 2182

(Senators Holmberg, Trenbeath)

ESTATE OR TRUST CONVEYANCE VALIDITY

AN ACT to provide for the validity of certain conveyances by an estate or trust; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Validity of conveyance by trust or estate. A conveyance is not void or voidable solely because the grantee in the conveyance is a trust, rather than the trustee of the trust, or is an estate, rather than the personal representative of the estate, if the identity of the grantee is reasonably ascertainable from the conveyance or from other information of public record, or from both.

SECTION 2. APPLICATION. This Act applies to any conveyance regardless of when executed.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 390

HOUSE BILL NO. 1149

(Industry, Business and Labor Committee)

(At the request of the Board of University and School Lands)

UNCLAIMED PROPERTY LIST PREPARATION

AN ACT to amend and reenact section 47-30.1-19.1 of the North Dakota Century Code, relating to preparation of property lists by the unclaimed property administrator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-30.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-19.1. Abandoned property ~~lists~~ list - Preparation - Contents - Confidentiality Exempt from open records. The administrator shall annually prepare ~~two lists~~ a list with information about property paid or delivered to the administrator under section 47-30.1-17.

1. ~~One~~ The list must refer to all securities and unclaimed funds of valued at fifty dollars or more in the administrator's custody and must contain the name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.
2. ~~The second list must refer to property that has been in the administrator's custody for more than twenty-four months and must contain the following information:~~
 - a. ~~The name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.~~
 - b. ~~The amount paid or delivered to the administrator.~~
 - c. ~~The name of the person who paid or delivered the property to the administrator.~~
 - d. c. A general description of the property.
 - e. d. The date on which the administrator received the property.
 - f. e. Other information the administrator deems appropriate for inclusion in the list.
3. ~~The lists described in this section must be updated annually.~~

4. 2. The ~~lists~~ list described in this section must be available for public inspection at all reasonable business hours and copies of ~~each~~ the list must be available to the public for a fee to be set by the administrator.
- ~~5.~~ 3. Reports filed with the administrator under section 47-30.1-17 are not public records and are not open to public inspection until twenty-four months after the date payment or delivery is made.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 391

SENATE BILL NO. 2111

(Industry, Business and Labor Committee)

(At the request of the Board of University and School Lands)

ABANDONED PROPERTY SALE NOTICE

AN ACT to amend and reenact subsection 1 of section 47-30.1-22 of the North Dakota Century Code, relating to notice of sale of abandoned property by the unclaimed property administrator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-30.1-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, the administrator, ~~within not less than~~ three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever manner affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property at a public sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. ~~Any~~ If any public sale held under this section is held in a physical location, the sale must be preceded by a single publication of notice, at least two weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

Approved April 22, 2005

Filed April 25, 2005

PUBLIC BUILDINGS

CHAPTER 392

SENATE BILL NO. 2211

(Senators Grindberg, Flakoll, Wardner)
(Representatives Drovdal, Grande, N. Johnson)

GUARANTEED ENERGY SAVINGS CONTRACTS

AN ACT to amend and reenact section 48-05-11 of the North Dakota Century Code, relating to guaranteed energy savings contracts in public buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-11 of the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter a guaranteed energy savings contract with a qualified provider if the governmental unit finds that the amount the governmental unit would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ~~ten~~ fifteen years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. The written guarantee must be for a period equal to the financing period, which may provide payments over a period not exceeding ~~ten~~ fifteen years. If the governmental unit can document that savings meet or exceed the payment for a period of not less than three years, the governmental unit may request a waiver of the guaranteed portion of the contract for the remainder of the financing term. A guarantee waiver request must be approved by a committee administered by the division of community services. A If the contract involves facility alteration or real property improvement, a qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract.

Approved March 22, 2005

Filed March 22, 2005

PUBLIC UTILITIES

CHAPTER 393

HOUSE BILL NO. 1314

(Representatives Nelson, Delmore, Klein, Svedjan)
(Senators Bercier, Trenbeath)

RENEWABLE ENERGY CREDIT TRADING AND TRACKING

AN ACT to create and enact three new sections to chapter 49-02 and two new subsections to section 57-38-01.8 of the North Dakota Century Code, relating to a renewable electricity and recycled energy credit trading and tracking system by the public service commission and a tax credit for a wind energy device; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Renewable electricity and recycled energy credit trading and tracking system. Notwithstanding any other provision of law, the commission by rule may establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This section applies to all public utilities, electric cooperatives, and municipal electric utilities.

SECTION 2. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Renewable electricity and recycled energy defined. As used in section 1 of this Act, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
5. Hydrogen, provided that the hydrogen is generated from a source listed in this section.

6. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

SECTION 3. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Qualifying for renewable electricity and recycled energy credits. For purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 2 of this Act.

SECTION 4. Two new subsections to section 57-38-01.8 of the North Dakota Century Code are created and enacted as follows:

If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 394

SENATE BILL NO. 2412

(Senators Stenehjem, O'Connell)

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

ELECTRIC SERVICE AREA AGREEMENTS

AN ACT to create and enact a new section to chapter 49-03 of the North Dakota Century Code, relating to electric service area agreements; to amend and reenact sections 49-02-01.1 and 49-03-01.5 of the North Dakota Century Code, relating to the jurisdiction of the public service commission and definitions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁵ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapter chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. A new section to chapter 49-03 of the North Dakota Century Code is created and enacted as follows:

Service agreements among electric providers.

1. This section authorizing service area agreements is intended to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for all

²⁰⁵ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2216, chapter 399.

consumers and territories within the state, and provide antitrust immunity to electric providers that negotiate service area agreements in accordance with this section.

2. An electric provider may enter into agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The designated service locations may include all or any portion of the service locations within a service area that are being served by the electric providers at the time of the agreement, or that could be economically served by the then existing facilities of the electric providers, or by reasonable and economic extensions of such existing facilities. The service area agreement must provide that it is subject to the continuing jurisdiction of the commission to settle all service location disputes between the contracting electric providers arising under the agreement.
3. Electric providers may enter into written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. Any sale, exchange, transfer, or lease of equipment, plant or facilities made under this subsection is subject to sections 49-04-05 and 10-13-08.1.
4. A service area agreement shall be promptly filed with the commission which must give notice of the filing within thirty days. Upon the commission's order, or if an affected electric consumer or electric provider requests a hearing within twenty days of the notice, the commission shall hold a hearing on the service area agreement.
5. The public service commission shall approve or disapprove a service area agreement. The commission may not revise a service area agreement except by mutual consent of the parties to the agreement.
6. A service area agreement shall be valid and enforceable if the commission after notice as provided in subsection 4, approves the agreement and finds that the agreement complies with this section and is in the public interest.
7. Upon approval of a service area agreement, the commission shall issue its order and any necessary certificates of public convenience and necessity authorizing an electric public utility to extend its plant and system and to provide electric service to service locations within the service areas.
8. The governing board of a city may require approval or disapproval of a service area agreement between electric providers to the extent the agreement encompasses service locations within the city. Nothing in this chapter shall be construed to limit the authority of a governing board of a city to exercise its franchise authority under section 40-05-01.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5. Definitions. As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
- ~~2.~~ 3. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~3.~~ 4. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
5. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
6. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 2 of this Act.
7. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 395

HOUSE BILL NO. 1156

(Political Subdivisions Committee)

(At the request of the Public Service Commission)

TELECOMMUNICATIONS COMPANY REGISTRATION

AN ACT to create and enact a new section to chapter 49-03.1 of the North Dakota Century Code, relating to registration of telecommunications companies that are not incumbent telecommunications companies; to amend and reenact subsection 2 of section 49-03.1-02 of the North Dakota Century Code, relating to the definition of a public utility and certificates of public convenience and necessity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter ~~shall~~ do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.

SECTION 2. A new section to chapter 49-03.1 of the North Dakota Century Code is created and enacted as follows:

Registration of telecommunications companies that are not incumbent telecommunications companies - Penalty.

1. Before providing service in this state or collecting payment for service in advance of providing the service for which payment was collected, a telecommunications company that is not an incumbent telecommunications company under chapter 49-21 shall register with the commission in a form satisfactory to the commission.
2. Registration must include, at a minimum, the following information, updated within fifteen days after any change:
 - a. The company's name, complete address, and telephone number;
 - b. All names under which the company does business;
 - c. All names under which the company has registered with the secretary of state;
 - d. The company's secretary of state system identification number;

- e. The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries;
 - f. A toll-free telephone number to which consumer inquiries or complaints may be made; and
 - g. Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation.
- 3. As part of the registration process, the commission may require by rule the posting of a surety bond in an amount determined by the commission. In addition to any other penalties provided by law, a violation of this subsection or any rule or order under this subsection is a class C felony if the accumulated customer loss resulting from a violation is greater than five thousand dollars.
- 4. The commission may revoke a company's registration, after notice and hearing under chapter 28-32, for violation of any law, rule, or order of the commission.
- 5. A company's registration is void if the company is voluntarily dissolved, involuntarily dissolved, or forfeits its authority to transact business under state law. The registration of a company that is involuntarily dissolved or that forfeits its authority to transact business is void effective with the effective date of involuntary dissolution under subsection 7 of section 10-19.1-146 or forfeiture under subsection 8 of section 10-19.1-146.
- 6. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe has not complied with this section and is requiring that customers pay for service in advance of receiving that service. The cease and desist order must be:
 - a. Directed against the telecommunications company's advance payment requirements, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
- 7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

CHAPTER 396

HOUSE BILL NO. 1324

(Representatives Keiser, Kasper, Klein)
(Senators O'Connell, Robinson, Trenbeath)

PUBLIC UTILITY ADVANCE DETERMINATION OF PRUDENCE

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Advance determination of prudence. A public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers may file an application with the commission for an advance determination of prudence regarding the proposal. The commission may order that expenses associated with investigating the application made by the public utility for prudence of a resource addition be paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of an electric resource addition if:
 - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
 - b. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - c. The commission determines that the resource addition is reasonable and prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is reasonable and prudent, shall consider the benefits of having the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.

3. A resource addition approved by the commission is subject to annual reporting requirements until commercial operation of the resource addition.
4. The commission's order determining prudence of the resource adjustment is binding for ratemaking purposes.
5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.
6. There is a rebuttable presumption that an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is located in the state is prudent.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 397

SENATE BILL NO. 2092

(Political Subdivisions Committee)

(At the request of the Public Service Commission)

AUCTIONEER AND CLERK VIOLATIONS

AN ACT to amend and reenact section 49-07-01.1 of the North Dakota Century Code, relating to violations of statutes, orders, or rules governing auctioneers and auction clerks; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty. Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, ~~and~~ 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 398

SENATE BILL NO. 2405

(Senators O'Connell, Nething, Wardner)

(Representatives Brandenburg, Pollert)

RAILROAD AND WAREHOUSE LEASE INSURANCE

AN ACT to amend and reenact subsection 3 of section 49-16-01.1 of the North Dakota Century Code, relating to insurance requirements in leases between railroads and grain and potato warehouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 49-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:
 - a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including:
 - (1) ~~Damage~~ damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors;
 - (2) ~~An, and an~~ endorsement naming the railroad as an additional insured; ~~and~~
 - (3) ~~An endorsement under the Federal Employers Liability Act [45 U.S.C. et seq.] if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of two hundred fifty loaded railroad cars.~~
 - b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.
 - c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the

acts or omission of the railroad that are willful, wanton, or grossly negligent.

- d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 399

SENATE BILL NO. 2216

(Senators Epegard, Heitkamp)

(Representative Carlson)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact section 49-21-10.3 of the North Dakota Century Code, relating to complaints against telecommunications companies; to amend and reenact sections 49-02-01.1, 49-21-01, 49-21-01.1, 49-21-01.3, 49-21-01.7, 49-21-02.2, and 49-21-10.2 of the North Dakota Century Code, relating to telecommunications regulation; and to repeal sections 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, and 49-21-20 of the North Dakota Century Code, relating to telecommunications regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁶ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, ~~49-21-08~~, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of

²⁰⁶ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2412, chapter 394.

WATS, 800, and message toll telecommunications services and private line transport services.

2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.
4. "Essential telecommunications service" means the following services:
 - a. Switched access;
 - b. ~~The transmission service line for a coin or pay telephone;~~
 - c. Installation of the service connection for other essential services from the end user's premises to the local exchange network; and
 - d. c. Flat Primary flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) ~~Primary directory listing, including nonlisted and nonpublished service.~~
 - (3) Access to directory assistance.
 - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.
5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.

7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. ~~Nonessential telecommunications services include, but are not limited to:~~
 - a. ~~InterLATA and intraLATA message toll service;~~
 - b. ~~Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;~~
 - c. ~~Centrex services and features;~~
 - d. ~~Installation of service connections in addition or supplementary to that described in subdivision e of subsection 4 which also provides transmission service between the end user's premises and the local exchange central office switch;~~
 - e. ~~Mobile telecommunications services using radio spectrum or cellular technology; and~~
 - f. ~~Packet-switched services.~~
13. "Price" means any charge set and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

14. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
15. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
16. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
17. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
18. "Switched access" means access to include:
 - a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
 - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides ~~feature group C~~ access service; and
 - f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "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.

SECTION 3. AMENDMENT. Section 49-21-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.1. Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services ~~which that~~ are not essential, such as "yellow pages" ~~advertising and bold-faced or color listings in "white pages"~~.
9. Private line transport service.
10. Services or facilities provided by a system or institution of higher education to:
 - a. Institution employees or students at institution facilities or housing owned or leased by the institution;
 - b. Affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - c. Other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - d. Casual users using the institution's facilities for conferences, seminars and other similar special events, and broadcasters of athletic events;

- e. Occupants of technology parks, or business incubators receiving secretarial or business startup support in facilities owned or leased by the institution during a business startup phase for a term not to exceed four years or until August 1, 2005, whichever is later; and
- f. Educational, governmental, and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

SECTION 4. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
4. The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
 5. The commission may investigate an increased price allowed pursuant to subsection 4 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
 6. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

²⁰⁷ **SECTION 5. AMENDMENT.** Section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.7. Powers in general. The commission has the power to:

²⁰⁷ Section 49-21-01.7 was also amended by section 1 of House Bill No. 1105, chapter 400.

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require ~~copies of~~ reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection ~~relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection~~ must be deposited in a special account within the public service commission.
7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.

11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Investigate and resolve numbering issues relating to assignment of NII dialing codes.
15. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are greater than obligations imposed under the act.

SECTION 6. AMENDMENT. Section 49-21-02.2 of the North Dakota Century Code is amended and reenacted as follows:

49-21-02.2. Cross-subsidization prohibited. Revenues obtained from regulated telecommunications services, including essential and nonessential telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services; and revenues from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

SECTION 7. AMENDMENT. Section 49-21-10.2 of the North Dakota Century Code is amended and reenacted as follows:

49-21-10.2. Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

SECTION 8. Section 49-21-10.3 of the North Dakota Century Code is created and enacted as follows:

49-21-10.3. Complaints. A person, and the commission on its own motion, may complain concerning any violation of law, rule, or order of the commission. In accordance with chapter 28-32, the commission shall provide notice of the complaint and the time and place of hearing. After hearing under chapter 28-32, if the commission finds that a service of a telecommunications company is inadequate or a company is in violation of a law, rule, or order, the commission may direct the telecommunications company to take reasonable and necessary remedial action to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The remedies of this section are in addition to the penalties under chapter 49-07.

SECTION 9. REPEAL. Sections 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, and 49-21-20 of the North Dakota Century Code are repealed.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 400

HOUSE BILL NO. 1105

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

UNAUTHORIZED TELECOMMUNICATIONS SERVICES

AN ACT to amend and reenact subsection 14 of section 49-21-01.7 and section 49-21-25 of the North Dakota Century Code, relating to numbering resource authority and unauthorized telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁸ **SECTION 1. AMENDMENT.** Subsection 14 of section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

14. Investigate and resolve numbering issues relating to assignment of NII dialing codes and resolve numbering resource conservation administration and area code assignment issues in accordance with the federal communication commission's numbering resource orders. The commission's jurisdiction with regard to numbering resource conservation administration is limited to those prefixes that are unassigned on January 1, 2005.

SECTION 2. AMENDMENT. Section 49-21-25 of the North Dakota Century Code is amended and reenacted as follows:

49-21-25. Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross-subsidization, section 49-21-02.2; unauthorized telecommunications service, section 49-21-02.4; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

Approved April 8, 2005
Filed April 12, 2005

²⁰⁸ Section 49-21-01.7 was also amended by section 5 of Senate Bill No. 2216, chapter 399.

CHAPTER 401**SENATE BILL NO. 2091**

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

ESSENTIAL SERVICES PRICE SCHEDULE FILING

AN ACT to amend and reenact subsection 1 of section 49-21-04 of the North Dakota Century Code, relating to filing essential services price schedules by telecommunications companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Schedules showing all prices for essential services, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered by such telecommunications company within this state;

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 402

HOUSE BILL NO. 1106

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

PSC PERFORMANCE ASSURANCE FUND BALANCE

AN ACT to amend and reenact section 49-21-31 of the North Dakota Century Code, relating to the maximum balance of the public service commission performance assurance fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-31 of the North Dakota Century Code is amended and reenacted as follows:

49-21-31. ~~(Effective through June 30, 2005)~~ Performance assurance fund - Continuing appropriation - Report to budget section. The performance assurance fund is a special fund in the state treasury. The commission shall deposit payments received by the commission under the performance assurance plan in the performance assurance fund until ~~deposits during a biennium equal the balance of the fund equals~~ one hundred thousand dollars. ~~All Up to one hundred thousand dollars per biennium of moneys deposited~~ in the fund are appropriated on a continuing basis to the commission to monitor the operation and effect of the performance assurance plan. All the payments received by the commission in excess of the one hundred thousand dollars ~~deposited balance~~ in the performance assurance fund must be deposited in the general fund. The commission shall report annually to the budget section of the legislative council with respect to the payments received under the plan and the expenditures from the performance assurance fund.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 403**HOUSE BILL NO. 1283**

(Representatives Brandenburg, Headland, S. Kelsh, Kretschmar, Monson)
(Senator Erbele)

ENERGY CONVERSION FACILITY SITING

AN ACT to amend and reenact subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to siting of energy conversion facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation of ~~five~~ one hundred 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.

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

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 404

SENATE BILL NO. 2133

(Appropriations Committee)

(At the request of the Public Service Commission)

ENERGY FACILITY SITING EXPENSE RECOVERY

AN ACT to amend and reenact section 49-22-22 of the North Dakota Century Code, relating to energy conversion and transmission facility siting process expense recovery and to creation of a special fund; to provide an appropriation; to provide a continuing appropriation; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

49-22-22. Application fees - Additional fees - Deposit in general fund Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant for a certificate of site compatibility shall pay to the commission an application fee in an amount equal to five hundred dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a certificate of corridor compatibility shall pay to the commission an application fee in an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a waiver shall pay to the commission an application fee in the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred fifty thousand dollars. ~~The commission shall specify the time and manner of payment of the application fee.~~
2. ~~The~~ At the request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the commission. ~~The commission shall specify the time and method of payment of any additional fees and shall refund the portion of such additional fees received from the applicant for completion of the site, corridor, or route evaluation and designation process which exceeds the expenses incurred for the evaluation and designation process. In no event shall the application fee under subsection 1 and any additional fees required~~

of the applicant under this subsection exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed transmission facility.

3. All fees collected under the provisions of this chapter shall be deposited in the general fund. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$60,000, or so much of the sum as may be necessary, to the public service commission for the purpose of refunding any application fee paid after August 1, 2004, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to fees paid after August 1, 2004.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 405

SENATE BILL NO. 2209

(Senators Krebsbach, Cook, Freborg, Urlacher)
(Representatives Kretschmar, Maragos)

ONE-CALL SYSTEM OPERATOR DEFINITION

AN ACT to amend and reenact subsection 14 of section 49-23-01 of the North Dakota Century Code, relating to the definition of one-call system operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is ~~not~~ considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 406

HOUSE BILL NO. 1169

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

TRANSMISSION AUTHORITY

AN ACT to provide for the North Dakota transmission authority, provide for the planning, constructing, owning, financing, maintaining, operating, and disposing of electric transmission facilities and related infrastructure, and to authorize issuance of revenue bonds; to amend and reenact subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an Administrative Agencies Practice Act exemption for the transmission authority; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of findings and public purpose. The legislative assembly finds and declares that:

1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal reserves, enough to last eight hundred years at today's thirty million tons of annual production.
2. The lignite industry presently generates electricity for more than two million people in the northern great plains region and there is increased regional demand for development of North Dakota's lignite resources.
3. North Dakota has enormous wind resources, providing additional economic opportunity to broaden and diversify the state's economy and diversify the region's energy supply, and that timely development of these resources will stabilize and increase revenues to the state.
4. Transmission constraints impede the development of the state's lignite and wind resources.
5. An essential governmental function and public purpose is to assist with the removal of electric transmission export constraints and to assist with upgrading and expansion of the region's electrical transmission grid to facilitate the development of the state's abundant natural resources.
6. Developing and exporting our natural resources will promote the public interest by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.
7. State ownership of electrical transmission facilities may not exceed the extent and duration necessary or useful to promote the public interest.

SECTION 2. North Dakota transmission authority. There is created the North Dakota transmission authority, which shall be governed by the industrial commission.

SECTION 3. Definitions. As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota transmission authority.
2. "Commission" means the industrial commission.
3. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct transmission facilities contemplated by the authority or to provide services fulfilling the need for such transmission facilities.
4. "Project area" means the geographic area in which construction of a transmission facility contemplated by the authority is likely to occur.
5. "Transmission facilities" means electric transmission lines and substations, and related structures, equipment, rights of way, and works of public improvement, located within and outside this state, excluding electric generating facilities.

SECTION 4. Purposes. The purpose for which the authority is created is to diversify and expand the North Dakota economy by facilitating development of transmission facilities to support the production, transportation, and utilization of North Dakota electric energy.

SECTION 5. Powers. The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;

7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;
9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; and
16. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

SECTION 6. Authority may act.

1. The authority shall coordinate its plans for transmission facilities with regional organizations having transmission planning responsibilities for the project area.
2. Before exercising its powers to construct transmission facilities granted to it in this chapter, the authority shall publish in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for transmission facilities contemplated by the authority. Persons willing to construct the transmission facilities or furnish services to satisfy the needs described in the notice have a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct transmission facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding the authority shall consider factors including economic impact to the state, economic feasibility, technical performance, reliability, past performance and the likelihood of successful completion and ongoing operation.
3. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the transmission facilities or

commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

SECTION 7. Authority may participate upon request. The authority may participate in a transmission facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

SECTION 8. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under this chapter.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.
4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.

- b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
 - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
- 5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
- 6. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.
- 7. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.
- 8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
- 9. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those

furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:

- a. Pay the expenses of operating and maintaining the transmission facilities;
- b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
- c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

SECTION 9. Public service commission jurisdiction and consultation.

1. The authority and the transmission facilities built under this chapter, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for chapter 49-22. Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise.

SECTION 10. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

SECTION 11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.

3. For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 12. Exemption from property taxes. Transmission facilities built under sections 1 through 11 of this Act are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

SECTION 13. Biennial report to legislative council. The authority shall deliver a written report on its activities to the legislative council each biennium.

²⁰⁹ **SECTION 14. AMENDMENT.** Subdivision 1 of subsection 2 of section 28-32-01 of 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, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency, and the North Dakota transmission authority.

Approved April 22, 2005

Filed April 25, 2005

²⁰⁹ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 13 of House Bill No. 1088, chapter 195, section 6 of Senate Bill No. 2027, chapter 538, and section 29 of Senate Bill No. 2074, chapter 89.

PUBLIC WELFARE

CHAPTER 407

SENATE BILL NO. 2410

(Senator J. Lee)

MEDICAL ASSISTANCE AND CHIPS ELIGIBILITY

AN ACT to create and enact a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to medical assistance and children's health insurance program eligibility determinations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding section 50-01.2-00.1, to determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.

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

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 408

SENATE BILL NO. 2118

(Human Services Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 50-06-15 of the North Dakota Century Code, relating to confidentiality of information contained in department of human services records; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-15 of the North Dakota Century Code is amended and reenacted as follows:

50-06-15. Disclosure Confidentiality of information contained in records - **Penalty.** ~~It is a class A misdemeanor for any person to disclose, authorize, or knowingly permit, participate in, or acquiesce in the disclosure of any records or~~

1. Individually identifiable information concerning persons an individual applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department when such information is derived directly or indirectly from records, papers, files, or communications received in the course of the administration of any such program or in the performance of official duties is confidential, except that any such records and information, including an individual's social security number, may be used in and disclosed:
 - a. In the administration of any such program and as;
 - b. As specifically authorized by the rules and regulations of the department; or
 - c. As permitted or required by other law.
2. A vendor, agent, or contractor of the department must agree to maintain the confidentiality of individually identifiable information disclosed to that person by the department or by any individual applying for or receiving assistance or services and may use and disclose confidential information only to the extent that person's agreement with the department permits the use and disclosure of any such information.
3. As used in this section, "individually identifiable information" means information, including an individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, as well as demographic information collected from an individual, that:
 - a. Is created or received by the department; and

- b. Relates to the past, present, or future assistance or services applied for or received by an individual under any program administered by or under the supervision and direction of the department that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 4. Any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information in violation of this section is subject to the penalty provided in section 12.1-13-01.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 409**HOUSE BILL NO. 1110**

(Human Services Committee)

(At the request of the Department of Human Services)

**RESIDENTIAL TREATMENT CENTER AND CHILD
CARE FACILITY MORATORIUM**

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to duties of the department of human services with respect to least restrictive care options; to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to extending the moratorium on expansion of residential treatment center for children bed capacity and residential child care facility or group home bed capacity; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03.1. (Effective through June 30, 2005 July 31, 2007) Moratorium on expansion of residential treatment center for children bed capacity. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 2003.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Placement of children - Least restrictive care. The department and county social service boards shall thoroughly explore the option of kinship care when a child is unable to return home due to safety concerns. Absent kinship options, the department and county social service boards shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671]. Before January 1, 2006, the department of human services shall issue a request for proposal for the provision of residential treatment services to meet the needs of youth with a history of sexual offenses within the state and explore options of therapeutic foster care for those youth who would benefit from this service level.

SECTION 3. AMENDMENT. Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.3. (Effective through June 30, 2005 July 31, 2007) Moratorium on expansion of residential child care facility or group home bed capacity. Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any

additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 2003.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

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

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 410**SENATE BILL NO. 2028**

(Legislative Council)
(Criminal Justice Committee)

GUARDIANSHIP SERVICES SYSTEM

AN ACT to provide for a guardianship services system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Guardianship services. The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system must include a base unit funding level, provider standards, staff competency requirements, the use of an emergency funding procedure to cover the costs of establishing needed guardianships, and guidelines and training for guardians. The department shall require that the contracting entity develop and maintain a system of volunteer guardians to serve the state. The department shall adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, to the department of human services for the purpose of contracting for the establishment and maintenance of a guardianship services system for vulnerable adults who are ineligible for developmental disabilities case management services, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 411

HOUSE BILL NO. 1460

(Representatives Price, Devlin, Kaldor)
(Senators Brown, J. Lee, Warner)

HUMAN SERVICES BIENNIAL REPORTS

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to a biennial report of certain programs administered or funded by the department of human services; to provide an appropriation; and to provide an expiration date.

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:

Biennial report on programs and services. The department shall present a biennial report to the legislative council which provides a five-year historical analysis of the number of persons receiving services under the medical assistance program, the costs for rendering the services by program appropriations, the budget requested, the budget appropriated, and actual expenditures for each of the preceding five years. The report must include a comparison of the state's experience with that of immediate surrounding states. Using actuarial tools, the report must project estimated usage trends and budget estimates for meeting those trends for the succeeding five-year period. The legislative council may request from the department actuarial reports in a format and timeline the legislative council determines necessary to monitor program policies and legislative appropriations.

SECTION 2. APPROPRIATION. There is 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 federal funds or other income, the sum of \$50,000, or so much of the sum as may be necessary, to the department of human services for the purpose of obtaining actuarial service for developing actuarially based methodologies for setting medical assistance payment rates and developing department budget recommendations, performing and reviewing data analyses, tracking program service utilization, and determining the effectiveness of quality and cost containment initiatives in the medical assistance program for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 412

SENATE BILL NO. 2409

(Senator Krauter)
(Representative Koppelman)

ABORTION ALTERNATIVES PROGRAM

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the establishment of an alternatives-to-abortion services program; to provide for reports to the legislative council; to provide an appropriation; and to provide an expiration date.

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:

Alternatives-to-abortion services program. Before January 1, 2006, the department of human services shall establish and implement a procedure to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The services must be outcome-based with positive outcome-based results. For purposes of this Act, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall make periodic reports to the legislative council regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2005.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$500,000, or so much of the sum as may be necessary, to the department of human services for the purpose of establishing and implementing alternatives-to-abortion services funding, for the biennium beginning July 1, 2005, and ending June 30, 2007. The department shall seek sources of funding for this purpose through the federal office of faith-based and community initiatives.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 413

HOUSE BILL NO. 1459

(Representatives Price, Devlin, Kaldor)

(Senators Brown, J. Lee, Warner)

MEDICAL SYSTEM PROGRAM MANAGEMENT

AN ACT to create and enact a new section to chapter 50-06 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to creation of a prescription drug monitoring program and medical assistance program management; to provide for reports to the legislative council; to provide for a legislative council study; to provide legislative intent; to provide an expiration date; and to declare an emergency.

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:

Prescription drug monitoring program. The department of human services shall seek federal grant funds for the planning and implementing of a prescription drug monitoring program. Upon receipt of federal grant funds, the department of human services shall adopt rules necessary to implement the prescription drug monitoring program and shall implement the program. State agencies shall cooperate with the department to ensure the success of the program.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance program management. The department of human services, with respect to the state medical assistance program, shall:

1. Provide statewide targeted case management services to include a concentrated, but not an exclusive, emphasis for the two thousand medical assistance recipients with the highest cost for treatment of chronic diseases and the families of neonates that can benefit from case management services. Case management services must focus on those recipients in these groups which will result in the most cost-savings, taking into consideration available resources, and may include a primary pharmacy component for the management of medical assistance recipient medication.
2. Require medical assistance providers to use the appropriate diagnosis or reason and procedure codes when submitting claims for medical assistance reimbursement; review and develop recommendations to identify instances in which a provider of services is not properly reporting diagnosis or reason and procedure codes when submitting claims for medical assistance reimbursements; and review and recommend any specific providers from which a potential benefit might be obtained by requiring additional diagnosis or reason and procedure codes.

3. Review and develop recommendations for the improvement of mental health treatment and services including the use of prescription drugs for medical assistance recipients.
4. Review and develop recommendations regarding whether the number of medical assistance recipients who are placed in out-of-state nursing homes should be reduced.
5. Review and develop recommendations regarding whether the use of post-office addresses or street addresses are the appropriate mailing addresses for medical assistance recipients.
6. Review and develop recommendations regarding whether to require medical assistance providers to secure prior authorization for certain high-cost medical procedures.
7. Review and develop recommendations regarding whether a system for providing and requiring the use of photo identification medical assistance cards for all medical assistance recipients should be implemented.
8. Review and develop recommendations regarding whether medical assistance providers should be required to use tamper-resistant prescription pads.
9. Develop a plan to provide information to blind and disabled medical assistance recipients who may be eligible for part D benefits under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The information must inform recipients of part D benefits for which the recipient may be eligible.
10. Review and recommend a plan for implementing the necessary infrastructure to permit risk-sharing arrangements between the department and medical assistance providers.

SECTION 3. PRESCRIPTION DRUG MONITORING PROGRAM WORKING GROUP - REPORT TO LEGISLATIVE COUNCIL.

1. The department of human services shall form a prescription drug monitoring program working group of interested individuals to:
 - a. Identify problems relating to the abuse and diversion of controlled substances and how a prescription drug monitoring program may address these problems.
 - b. Identify a strategy and propose a prescription drug monitoring program through which to address the identified problems, including consideration of how the program would fit into the overall strategy. Factors to be addressed in the program must include:
 - (1) Determination of what types of prescription drugs will be monitored.

- (2) Determination of what types of drug dispensers will be required to participate in the program.
 - (3) Determination of what data will be required to be reported.
 - (4) Determination of what persons will be allowed to access data, what types of data will be accessible, and how to ensure appropriate protection of data.
 - (5) Determination of the entity that will implement and sustain the program.
 - c. Establish how the program will be implemented, the fiscal requirements for implementation, and the timelines for implementation. In establishing how the program will be implemented, the working group shall consider the feasibility and desirability of formal or informal educational outreach to North Dakota communities and interested persons.
 - d. Consider possible performance measures the state may use to assess the impact of the program and whether special data collection instruments would be required to effectively monitor the impact of the program.
 - e. Provide to the department of human services a draft of proposed administrative rules to implement the proposed program.
2. The membership of the working group may include representatives from the private and public sectors, including representatives from the North Dakota medical association; the North Dakota nurses association; the North Dakota pharmacists association; the North Dakota society of health-system pharmacists; the North Dakota board of pharmacy; the North Dakota dental association; the North Dakota veterinary medical association; the North Dakota healthcare association; the North Dakota long term care association; the university of North Dakota school of medicine and health sciences; law enforcement agencies, appointed by the attorney general; the department of human services; the state department of health; workforce safety and insurance; the information technology department; and the federally designated state peer review organization.
 3. During the 2005-06 interim, the department of human services and the prescription drug monitoring program working group shall provide the legislative council with periodic status reports on the activities of the working group and the implementation of the program.
 4. The department shall designate the chairman and vice chairman of the working group.

SECTION 4. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall receive input from and report to the legislative council regarding the development of recommendations required in section 2 of this Act.

SECTION 5. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the medicaid medical reimbursement

system, including costs of providing services, fee schedules, parity among provider groups, and access. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-ninth legislative assembly that the department promptly initiate and conduct the rulemaking activity under chapter 28-32 which is deemed necessary to implement this Act.

SECTION 7. EXPIRATION DATE. Section 3 of this Act is effective through December 31, 2006, and after that date is ineffective.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 414

SENATE BILL NO. 2373

(Senators Robinson, Brown, Lyson)
(Representatives DeKrey, Kroeber, Nottestad)

METHAMPHETAMINE TREATMENT PILOT PROJECT

AN ACT to provide for the implementation of a pilot program for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances; to provide for a report to the legislative assembly; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Substance abuse treatment pilot program. The department of human services shall implement a substance abuse treatment pilot program consisting of up to twenty beds at the state hospital or at a private treatment facility through a grant as determined by the department for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. Prior to establishing the program, the department shall issue a statewide request for proposal seeking providers for this program.

SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall collect statistics regarding the operation of the pilot program, track participants in the pilot program, and provide a report to the sixtieth legislative assembly detailing the number of participants in the pilot program, the cost of the pilot program, relapse statistics, and other data concerning the effectiveness of the pilot program provided for under section 1 of this Act.

SECTION 3. APPROPRIATION - ADDITIONAL FUNDS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, and from other funds consisting of third party, client payments, and other sources, the sum of \$800,000, to the department of human services for the costs associated with establishing the pilot program at the state hospital or at a private treatment facility for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances, for the biennium beginning July 1, 2005, and ending June 30, 2007. The funds appropriated under this section may not be used for the cost of any facility construction or renovation project. If additional federal or other funds become available for the treatment services provided for under this section, the department of human services may seek emergency commission and budget section approval to receive and spend the funds for treatment services, excluding construction or renovation projects.

SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2007, and after that date is ineffective.

Approved May 4, 2005
Filed May 4, 2005

CHAPTER 415

HOUSE BILL NO. 1172

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT COLLECTION AND DISBURSEMENT

AN ACT to create and enact a new section to chapter 13-05, two new subsections to section 14-09-25, a new subsection to section 15-39.1-30, a new subsection to section 39-03.1-28, three new sections to chapter 50-09, and a new subsection to section 54-52-26 of the North Dakota Century Code, relating to judgment interest and the collection and disbursement of child support; to amend and reenact subsection 3 of section 14-09-08.1, section 14-09-08.15, subsection 5 of section 14-09-09.3, section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2, subsection 1 of section 28-22-19, sections 34-15-06, 35-34-02, 35-34-05, 35-34-09, and 50-09-08.5, subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32, and section 50-09-33 of the North Dakota Century Code, relating to reporting of new hires, account liens, enforcement of medical support, and the collection and disbursement of child support; to provide a continuing appropriation; 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 13-05 of the North Dakota Century Code is created and enacted as follows:

Child support collection agencies.

1. Notwithstanding section 13-05-02, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.
2. A collection agency licensed under this section may not:
 - a. Impose a fee or charge for any child support collected primarily through the efforts of a governmental agency;
 - b. Impose a fee or charge for collection of a current child support payment; or
 - c. Designate a current child support payment as past-due support or other amount owed.
3. If the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1, all child support payments collected by a collection agency must be paid to the department of human services within five business days for

disbursement under section 14-09-25. Child support payments disbursed under section 14-09-25 may not be redirected to a collection agency unless specifically permitted by rules adopted by the department of human services.

4. A collection agency failing to pay child support payments to the department of human services as required in this section is liable to the obligor for three times the amount improperly withheld by the collection agency or five hundred dollars, whichever is greater, in addition to any other remedy or damages permitted by law. The department of human services is not required to give credit for payments withheld by a collection agency in violation of this section.
5. Any person contracting for services with a collection agency for the collection of child support may cancel the contract without a fee or charge upon thirty days' written notice.

SECTION 2. AMENDMENT. Subsection 3 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Whenever there is failure to make the payments as required, the clerk of court may, and upon request of the obligee or child support agency, 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 to issue a citation for contempt of court against the person who has failed to make the payments and the. The citation must may be served on that person as provided by the North Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 50-09-08-6 by first-class mail with affidavit of service to the person's last-known address.

SECTION 3. AMENDMENT. Section 14-09-08.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.15. Reasonable cost of health insurance. For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the public authority in compliance with rules promulgated by the secretary of the United States department of health and human services.

SECTION 4. AMENDMENT. Subsection 5 of section 14-09-09.3 of the North Dakota Century Code is amended and reenacted as follows:

5. Any contempt proceeding against an income payer under this section must be commenced within one ~~hundred eighty days~~ year after the income payer's act or failure to act upon which such proceeding is based.

SECTION 5. AMENDMENT. Section 14-09-09.10 of 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. "Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
- ~~2.~~ 3. "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.
- ~~3.~~ 4. "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.
4. 5. "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.
5. 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
6. 7. "Employer" means income payer.
7. 8. "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.
8. 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
9. 10. "Income payer" 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.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

- ~~40-~~ 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~44-~~ 13. "Obligor" means any person owing a duty of support.
- ~~42-~~ 14. "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.
- ~~43-~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~44-~~ 16. "Public authority" means the department of human services in execution of its duties pursuant to 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.].
- ~~45-~~ 17. "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 6. Two new subsections to section 14-09-25 of the North Dakota Century Code are created and enacted as follows:

The public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the public authority determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before the effective date of this Act only if the arrearage is assigned to the public authority under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.

If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:

- a. As specifically provided in a court order in the event of the obligee's death;
- b. To the obligee's estate or as provided in the obligee's will;
- c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; or
- d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old.

SECTION 7. A new subsection to section 15-39.1-30 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

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 is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, 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 past-due support need not be docketed and the writ may omit:
 - a. ~~The seal of the court;~~
 - b. ~~The subscription of the clerk of that court;~~
 - c. ~~The attestation in the name of the judge of the court that entered the judgment;~~
 - d. ~~A statement of the courts and counties to which the judgment has been transcribed; and~~
 - e. 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 be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.

SECTION 9. AMENDMENT. Subsection 1 of section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes. The exemption in this subsection does not apply to the collection of child support unless federal law requires an exemption or if complying with an execution or

other process would require an actuarial analysis to determine the current value of the amounts that are payable to the debtor.

SECTION 10. AMENDMENT. Section 34-15-06 of the North Dakota Century Code is amended and reenacted as follows:

34-15-06. 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 of court 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 or if there is no current order for child support for the employee, failure to pay a civil money penalty may be punished as a civil contempt of court by any court of this state with jurisdiction over the employer.

SECTION 11. AMENDMENT. Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

35-34-02. 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 listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

SECTION 12. AMENDMENT. Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

35-34-05. 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 or in any other manner agreed to by the financial institution. 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 and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff 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. ~~4.~~ A lien under this section is perfected when the financial institution is served with notice of the lien.

SECTION 13. AMENDMENT. Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

35-34-09. 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, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law.~~ 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.

²¹⁰ **SECTION 14.** A new subsection to section 39-03.1-28 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

SECTION 15. AMENDMENT. Section 50-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.5. Securing assets to satisfy 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 any current support obligation and the past-due amount by issuing writs of execution under chapter 28-21 ~~or domestic relations orders that comply with federal law regarding pensions.~~ Those writs of execution or domestic relations orders may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workforce safety and insurance 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.

²¹⁰ Section 39-03.1-28 was also amended by section 5 of House Bill No. 1069, chapter 531.

SECTION 16. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support arrears registry. The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

²¹¹ **SECTION 17. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is ~~in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less~~ listed on the arrears registry; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

SECTION 18. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from

²¹¹ Section 50-09-08.6 was also amended by section 3 of House Bill No. 1162, chapter 122.

legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.

4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, 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 the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

SECTION 20. AMENDMENT. Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

SECTION 21. AMENDMENT. Section 50-09-33 of the North Dakota Century Code is amended and reenacted as follows:

50-09-33. (Effective through June 30, 2005 ~~2007~~) Continuing appropriation - Cooperative agreements for child support enforcement services. All federal funds and other income generated by the state agency under a cooperative agreement with one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services, is appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

SECTION 22. A new subsection to section 54-52-26 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 416

SENATE BILL NO. 2301

(Senators J. Lee, Brown)
(Representatives Boucher, Devlin, Price, Weisz)

CHILD SUPPORT ENFORCEMENT

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 3 of section 50-01.2-03.2 and sections 50-03-10 and 50-09-15.1 of the North Dakota Century Code, relating to administration of the child support enforcement program; to provide for a child support enforcement task force; to provide a statement of legislative intent; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which more than twenty percent of the caseload for these programs consists of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The reimbursement must be such that:
 - a. An affected county's expenses for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at ninety one hundred percent;
 - b. Each calendar year the affected counties will receive quarterly allocations based on the actual county expenses for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 57-13-07 available on that date; and
 - c. The reimbursement will be calculated for each county and reported to the county social service board prior to August first of the year preceding the allocation.

SECTION 2. AMENDMENT. Section 50-03-10 of the North Dakota Century Code is amended and reenacted as follows:

50-03-10. 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, and the 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, and the general fund equivalents of social service block grant funds, ~~and child support incentive funds~~ available to the department for that purpose. The department shall distribute child support incentive funds according to a formula that promotes performance and consistency in child support enforcement activities throughout the state.

SECTION 3. AMENDMENT. Section 50-09-15.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-15.1. Child support incentives improvement account - Continuing appropriation. ~~The child support incentives improvement account is established as a special account in the state treasury. One Five percent of the total amount of child support incentive payments paid to the state by the office of child support enforcement of the United States department of health and human services must be deposited into the child support incentives improvement account. The state agency, within the limits of legislative appropriation, shall distribute the moneys in the child support incentives account as grants to organizations determined eligible by the state agency for the purpose of providing child support-related education of and training for individuals involved in child support enforcement. The state agency, prior to distributing the moneys in the child support incentives account, shall invite comments regarding the distribution of the moneys from representatives of the North Dakota state's attorneys association and regional child support offices and other interested persons. The funds in the child support improvement account, the balance of the child support incentives account on the effective date of this Act, and any matching federal funds received by the state agency are appropriated on a continuing basis for the sole purpose of producing increases in child support collections, federal child support incentives, or other revenue or savings to the state agency, or reductions in unpaid child support, that exceed the total amount of improvement funds expended. Improvement funds may be used to sponsor training and publications that promote child support enforcement activities. The state agency shall develop and maintain a business plan that defines the goals and objectives of the child support enforcement program, identifies methods to increase child support collections or reduce unpaid child support, and outlines the process for evaluating progress toward the goals and objectives in the business plan. The state agency must maintain a record of its use of improvement funds and the anticipated result from the use of the funds. Improvement funds may only be used for activities that are included in the business plan maintained under this section.~~

SECTION 4. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Administration of child support enforcement activities. The state agency shall identify any activity of the child support enforcement program the state agency believes may be administered more effectively, efficiently, or consistently through an agreement between two or more child support agencies or through an agreement for centralized administration under section 50-09-33 and shall direct a child support agency to enter an agreement to perform that activity on terms prescribed by the state agency. The department may not pay any incentive funds to a county or a child support agency that does not enter an agreement under this section. Any attorney performing an activity under this section represents the state and shall obtain an appointment from the attorney general under section 54-12-08.

SECTION 5. CHILD SUPPORT ENFORCEMENT TASK FORCE. The state agency shall convene a child support enforcement task force that includes two members of the legislative assembly appointed by the chairman of the legislative

council and representatives from the state agency, the counties, and the judicial system. The state agency shall extend invitations to representatives from Indian tribes. The task force shall study the organizational and programmatic structure of the child support enforcement program to determine how to enhance service delivery, improve performance, and increase efficiencies. The study must consider the impact on customers, the effect on Indian counties, and the fiscal effect on counties and the state. The findings and recommendations, together with any legislation required to implement the recommendations, must be presented by the state agency to the sixtieth legislative assembly.

SECTION 6. LEGISLATIVE INTENT - OPERATIONAL EFFICIENCIES. It is the intent of the legislative assembly that the authority granted to the department of human services in section 4 of this Act for administration of child support enforcement be exercised to increase child support collections or operational efficiencies such as maximization of federal incentive funds, optimal distribution of staff at the state office and regional offices, improvements in automation, and specialization of staff. The department of human services and North Dakota human resource management services shall review the classification and compensation of all state and county employees engaged in child support enforcement activities.

SECTION 7. EXPIRATION DATE. Section 5 of this Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 417

SENATE BILL NO. 2395

(Senators J. Lee, Cook)

(Representatives R. Kelsch, Wrangham)

RUSSELL-SILVER SYNDROME TREATMENT

AN ACT to create and enact a new section to chapter 50-10 of the North Dakota Century Code, relating to a department of human services treatment program for children with Russell-Silver syndrome; to amend and reenact subsection 12 of section 50-10-06 of the North Dakota Century Code, relating to income eligibility for Russell-Silver syndrome treatment and services; to direct the department of human services to apply for a medical waiver; to provide for a legislative council study; to provide for a report to the legislative council; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 50-10-06 of the North Dakota Century Code is amended and reenacted as follows:

12. Establish eligibility criteria for services under this chapter at one hundred eighty-five percent of the poverty line, except for criteria relating to Russell-Silver syndrome, phenylketonuria, or maple syrup urine disease treatment services for which income is not to be considered when determining eligibility. For purposes of this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

SECTION 2. A new section to chapter 50-10 of the North Dakota Century Code is created and enacted as follows:

Russell-Silver syndrome - Services - Definitions.

1. The state agency shall provide payment of a maximum of fifty thousand dollars per child per biennium for medical food and growth hormone treatment at no cost to individuals through age eighteen who have been diagnosed with Russell-Silver syndrome, regardless of income. If the state agency provides an individual with services under this section, the state agency may seek reimbursement from any governmental program that provides coverage to that individual for the services provided by the department. The parent of an individual receiving services under this section shall obtain any health insurance available to the parent on a group basis or through an employer or union, and that insurance must be the primary payer before payment under this program.
2. For purposes of this section:
 - a. "Growth hormone treatment" means a drug prescribed by a physician or other licensed practitioner for the long-term treatment of growth failure, the supplies necessary to administer the drug, one out-of-state physician visit per year to obtain expert consultation for the management of Russell-Silver syndrome,

appropriate in-state physician visits, and the travel expenses associated with physician visits for the child and one parent.

- b. "Medical food" means a formula 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 as well as any medical procedure and supplies necessary for assimilation of the formula.

SECTION 3. MEDICAID WAIVER - IN-HOME SERVICES. The department shall apply for a medicaid waiver to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care. The department may limit the waiver to fifteen participants and may prioritize applicants by degree of need.

SECTION 4. LEGISLATIVE COUNCIL STUDY - HEALTH CARE NEEDS. The legislative council shall consider studying, during the 2005-06 interim, issues relating to medicaid and other public funding for the extraordinary health care needs of children who live in an institution or who are at risk of institutionalization; the comprehensive health association of North Dakota program provided for under chapter 26.1-08, including contracting for a cost-benefit analysis of this program; and the state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 5. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department shall report to the legislative council regarding the status of the medicaid waiver to provide in-home services under section 3 of this Act, the number of applications the department receives for the in-home services, and the status of the program's appropriation.

SECTION 6. APPROPRIATION. There is 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 providing Russell-Silver syndrome services, for the biennium beginning July 1, 2005, and ending June 30, 2007.

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

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 418

SENATE BILL NO. 2149

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD CARE AND ABUSE AND NEGLECT

AN ACT to create and enact a new subsection to section 50-01.2-03 of the North Dakota Century Code, relating to duties of county social service boards; and to amend and reenact sections 50-11-00.1 and 50-11-04, subsection 2 of section 50-11-06.6, section 50-11.1-02, subsection 5 of section 50-11.1-03, sections 50-11.1-04, 50-11.1-06, 50-11.1-07, and 50-11.1-07.1, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.4, 50-11.1-07.5, 50-25.1-02, 50-25.1-06, and 50-25.1-06.1, and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to authorized agents of the department of human services for foster care licensing, child care licensing, and child abuse and neglect services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-01.2-03 of the North Dakota Century Code is created and enacted as follows:

Supervise and administer designated child welfare services under the direction and supervision of the department of human services. Through established procedures the department of human services may release the county social service board of this duty or the county social service board may request to be released from this duty by the department of human services. If a county is released from the county's duty to supervise and administer designated child welfare services under this subsection, the county retains its financial responsibility for providing those services unless otherwise negotiated and approved by the department.

SECTION 2. AMENDMENT. Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-00.1. Definitions. As used in this chapter:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Department" means the department of human services.
- ~~2.~~ 3. "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.
- ~~3.~~ 4. "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

4. 5. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage, in which case such limitation does not apply.
5. 6. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person's own care.
6. 7. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.
7. 8. "Group home" means a residence in which foster care is regularly provided for more than four, but less than ten, unrelated children.
8. 9. "Residential child care facility" means a facility other than an occupied private residence providing foster care to more than eight unrelated children, except as may be otherwise provided by rule or regulation.

SECTION 3. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11-04. Inspection by the department - Inspection and report by ~~county social service board~~ the department or its authorized agent. The department and its authorized agents at any time may inspect any facility licensed under the provisions of this chapter or with respect to which a license application has been made. The department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the ~~county social service board of the county in which the facility is located~~ department or its authorized agent shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

SECTION 4. AMENDMENT. Subsection 2 of section 50-11-06.6 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person, organization, corporation, or limited liability company is entitled, upon request, to be advised by the department or ~~county social service boards~~ its authorized agent regarding the policy, procedure, and intentions of the department or ~~county social service boards~~ its

authorized agent toward placement of children in that person's, organization's, corporation's, or limited liability company's facility if:

- a. The person, organization, corporation, or limited liability company is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
- b. The person, organization, corporation, or limited liability company is applying for its license to provide foster care for children under this chapter.

²¹² **SECTION 5. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
- ~~2.~~ 3. "County agency" means the county social service board in each of the counties of the state.
- ~~3.~~ 4. "Department" means the department of human services.
4. 5. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, or known by any other name.
- ~~5.~~ 6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.

²¹² Section 50-11.1-02 was also amended by section 1 of Senate Bill No. 2304, chapter 419.

- d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Headstart programs that are federally funded and meet federal headstart standards.
- j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.

~~6-~~ 7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.

~~7-~~ 8. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.

~~8-~~ 9. "In-home provider" means any person who provides early childhood services to children in the children's home.

~~9-~~ 10. "License" means the right, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, or preschool educational facility.

~~10-~~ 11. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.

~~11-~~ 12. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.

- ~~42.~~ 13. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
- ~~43.~~ 14. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~44.~~ 15. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

SECTION 6. AMENDMENT. Subsection 5 of section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. All fees collected under subsection 3 must be paid to the ~~county social service board~~ department or the department's authorized agent and must be used to defray the cost, to ~~that board~~ the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 7. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. Applications for early childhood facility licenses must be made on forms provided, in the manner prescribed, by the department. The ~~county agency~~ department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all facilities applying for a license. The applicant for a license and the applicant's employees, and, if the license is for an occupied private residence, every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of an early childhood facility upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application;
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03; and

6. The group child care or child care center facility maintains at all times during which early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

The license issued to the operator of an early childhood facility must be in force and effect for a period of not more than two years.

SECTION 8. AMENDMENT. Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06. In-home provider - Registration voluntary - Issuance of registration certificate - Term. In-home providers may apply for a registration certificate from the department. ~~The county agency~~ the department or the department's authorized agent shall determine whether the standards have been met and shall issue or deny a registration certificate based upon that determination. Registration certificates for in-home providers must be in force and effect for not more than one year.

SECTION 9. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07. Investigation of applicants, licensees, and registrants - Maintenance of records - Confidentiality of records.

1. The department and ~~the county agency~~ its authorized agent at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of early childhood services in any early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration document under this chapter. Upon request of the department or ~~the county agency~~ its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect any facility for which a license is applied for or issued and shall report the findings to ~~the county agency~~ the department or the department's authorized agent.
2. Licensees and registrants shall:
 - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department;
 - b. Admit for inspection authorized agents of the department ~~or the county agency~~ and open for examination all records, books, and reports of the home or facility; and
 - c. Notify the parent, guardian, or custodian of each child receiving care at the facility and each employee of the facility of the process for reporting a complaint or a suspected licensing violation.
3. Except as provided in subsection 4, all records and information maintained with respect to children receiving early childhood services

are confidential and must be properly safeguarded and may not be disclosed except:

- a. In a judicial proceeding;
 - b. To officers of the law or other legally constituted boards or agencies; or
 - c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.
4. A provider of early childhood services, upon the request of the parent or guardian of a child for whom the provider provides such services, shall make available to the parent or guardian a list of the names, telephone numbers, and addresses of the parents or guardians of children for whom early childhood services are provided. The list may only include the names, telephone numbers, or addresses of parents or guardians who grant the provider permission to disclose that information.

SECTION 10. AMENDMENT. Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.1. Notice. After each inspection or reinspection, the ~~county agency~~ department or the department's authorized agent shall, by certified mail, send copies of any correction order or notice of noncompliance, to the early childhood facility.

SECTION 11. AMENDMENT. Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the ~~county agency~~ department or the department's authorized agent finds, upon inspection of an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order must be issued to the facility. The correction order must cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.

SECTION 12. AMENDMENT. Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.4. Fiscal sanctions. An early childhood facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction must be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and must continue until a notice of correction is received by the ~~county agency~~ department or the department's authorized agent in accordance with section 50-11.1-07.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 13. AMENDMENT. Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.5. Accumulation of fiscal sanctions. An early childhood facility shall promptly notify the ~~county agency department~~ or the department's authorized agent in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the ~~county agency department~~ or the department's authorized agent, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be reinspected within three working days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the daily assessment of fiscal sanction must resume and the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The ~~county agency department~~ or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

²¹³ **SECTION 14. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-02. Definitions.

1. "A person responsible for the child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or a person responsible for the child's welfare in a residential setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current diagnostic and statistical manual published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07.
4. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.
5. "Authorized agent" means the county social service board, unless another entity is designated by the department.

²¹³ Section 50-25.1-02 was also amended by section 1 of Senate Bill No. 2383, chapter 434.

- ~~6.~~ 6. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
- ~~7.~~ 7. "Department" means the department of human services or its designee.
- ~~6.~~ 8. "Harm" means negative changes in a child's health which occur when a person responsible for the child's welfare:
- a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
 - b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
- ~~7.~~ 9. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- ~~8.~~ 10. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.
- ~~9.~~ 11. "Neglected child" means a deprived child as defined in chapter 27-20.
- ~~40.~~ 12. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- ~~44.~~ 13. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- ~~42.~~ 14. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible of a physician, a representative of a child-placing agency, a representative of the state

department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

SECTION 15. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06. Protective and other services to be provided. The department ~~and the appropriate county social service board~~ shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children. The department may discharge the duties described in this section through an authorized agent.

SECTION 16. AMENDMENT. Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06.1. Caseload standards - Reimbursement. The department shall adopt caseload standards establishing minimum staff to client ratios for the assessment of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation, the department shall reimburse ~~each county its authorized agent~~, upon claim being made by the ~~county authorized agent~~, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming ~~county authorized agent~~ in the amount of seventy-five percent of such additional staff costs, the department shall reimburse each claiming ~~county authorized agent~~ for that percentage of additional staff costs which the appropriation is sufficient to defray.

²¹⁴ **SECTION 17. AMENDMENT.** Subsection 3 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Authorized staff of the department, ~~appropriate county social service boards~~ and its authorized agents, and appropriate state and local child protection team members, and citizen review committee members.

Approved April 19, 2005
Filed April 20, 2005

²¹⁴ Section 50-25.1-11 was also amended by section 3 of Senate Bill No. 2383, chapter 434.

CHAPTER 419

SENATE BILL NO. 2304

(Senators Dever, Brown, Cook, Tollefson)
(Representative L. Meier)

EARLY CHILDHOOD SERVICES

AN ACT to amend and reenact section 50-11.1-02 of the North Dakota Century Code, relating to services included within the definition of early childhood services; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
2. "County agency" means the county social service board in each of the counties of the state.
3. "Department" means the department of human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, drop-in care center, or known by any other name.
- ~~6.~~ 6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.

²¹⁵ Section 50-11.1-02 was also amended by section 5 of Senate Bill No. 2149, chapter 418.

- b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
 - d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, ~~other than employment~~, on or near the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Headstart programs that are federally funded and meet federal headstart standards.
 - j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.
- ~~6.~~ 7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
- ~~7.~~ 8. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
- ~~8.~~ 9. "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~9.~~ 10. "License" means the rights, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility.

- ~~40.~~ 11. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
- ~~44.~~ 12. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.
- ~~42.~~ 13. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
- ~~43.~~ 14. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~44.~~ 15. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

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

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 420**HOUSE BILL NO. 1181**

(Representatives Keiser, Devlin, Price)
(Senators Brown, J. Lee)

FUNERAL CONTRACT MEDICAL ASSISTANCE EFFECT

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to funds designated for funeral expenses and eligibility for medical assistance; and to direct the department of human services to seek a waiver.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.3. When designated pre-need funeral service contracts, 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 pre-need funeral service contracts, prepayments, or deposits to a fund which total ~~three~~ five thousand dollars or less designated by the applicant or recipient as set aside to pay for the applicant's or recipient's funeral. An applicant or recipient designates a prepayment or deposit for that applicant's or recipient's burial by providing funds that are to be used for the funeral or burial expenses of the applicant or recipient. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral pre-need contracts, prepayments, or deposits. 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 ~~three~~ five thousand dollars.

SECTION 2. WAIVER. During the 2005-07 biennium, the department of human services shall seek approval from the federal government to disregard for medicaid eligibility purposes any pre-need funeral service contract, prepayment, or deposit to a fund, regardless of its value, made by a medicaid applicant or recipient if the pre-need funeral service contract, prepayment, or deposit to a fund was purchased before April 1, 2004.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 421

SENATE BILL NO. 2185

(Senator J. Lee)

(Representatives Keiser, Price)

MEDICAL ASSISTANCE BUY-IN FOR DISABLED

AN ACT to amend and reenact section 50-24.1-02.7 of the North Dakota Century Code, relating to buy-in of medical assistance for individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.7 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.7. (Effective through June 30, 2005) Medical assistance buy-in program for disabled Workers with disabilities coverage. The department of human services shall establish and implement a buy-in program to provide medical assistance to an individual who, except for substantial gainful activity, meets the definition of disabled under the supplemental security income program under title XVI of the federal Social Security Act, who is at least ~~eighteen~~ sixteen but less than sixty-five years of age, and who is gainfully employed. The program must:

1. Be made available to an individual with a disability who is a member of a family the ~~total annual net~~ income of which is less than two hundred twenty-five percent of the most recently revised official poverty line published by the federal office of management and budget for the family;
2. ~~Disregard~~ Allow up to an additional ten thousand dollars ~~earned while an eligible individual is enrolled in medical assistance and retained as an approved plan to achieve self-support in assets;~~
3. Require the payment of a premium that is based upon a sliding scale which may not be less than two and one-half percent nor more than seven and one-half percent of the individual's gross countable income;
4. Include a one-time program enrollment fee of one hundred dollars; and
5. Provide that the failure of an enrolled individual to pay premiums for three ~~consecutive~~ months may result in the termination of enrollment in the program.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 422

SENATE BILL NO. 2190

(Senator Wardner)
(Representative Wald)

ANNUITY TRANSFERS

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to transfers involving annuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁶ **SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.8. Transfers involving annuities.

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future. The term does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half.
2. The purchase of an annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1 is considered an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:
 - a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.
 - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.
 - c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.

²¹⁶ Section 50-24.1-02.8 was also amended by section 1 of House Bill No. 1248, chapter 423.

- d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the ~~department of human services~~ life expectancy tables published by the centers for medicare and medicaid services.
- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined ~~by the department pursuant to~~ under 42 U.S.C. 1396r-5.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 423

HOUSE BILL NO. 1248

(Representatives Keiser, Price)

ANNUITY TRANSFERS

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to transfers involving annuities; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.8. Transfers involving annuities.

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future. The Except for purposes of subsections 3 and 5, the term does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half.
2. The purchase of an annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1 is considered an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:
 - a. The annuity is irrevocable and cannot be assigned to another person.
 - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.
 - c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.

²¹⁷ Section 50-24.1-02.8 was also amended by section 1 of Senate Bill No. 2190, chapter 422.

- d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the department of human services.
 - e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.
- 3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.
- 4. An annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1, purchased after July 31, 2005, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:
 - a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
 - b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
 - c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;
 - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year;
 - e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and

- f. The annuity does not include any provision that limits the effect of subsection 5.
5. Except as provided in subsection 2, before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty-five years of age or older, the department of human services, or the successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty-five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant which complies with subsection 4.

SECTION 2. APPLICATION. If any provision of this Act is determined by the federal government to be in conflict with existing or future federal requirements with respect to federal participation in medical assistance, the federal requirements prevail.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 424

HOUSE BILL NO. 1436

(Representatives Koppelman, Kasper, Kerzman)
(Senators Nething, Warner)

MEDICAL ASSISTANCE INTEREST ACCRUAL

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to the accrual of interest on medical assistance of a deceased recipient.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-07. Recovery from estate of medical assistance recipient.

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 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 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.
2. No A claim must may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 425

HOUSE BILL NO. 1206

(Representatives Porter, Devlin, Price)

(Senators Dever, J. Lee)

MEDICAL ASSISTANCE REIMBURSEMENT APPEALS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to provider appeals of medical assistance reimbursement denials; and to amend and reenact section 50-24.1-15 of the North Dakota Century Code, relating to prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-15 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-15. Prehospital emergency medical services. Medical assistance coverage must include prehospital emergency medical services benefits in the case of a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and which a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part. A medical assistance claim that meets the prudent layperson standard of this section may not be denied by the department on the basis that the prehospital emergency medical services were not medically necessary or that a medical emergency did not exist.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Provider appeals - Definitions.

1. For purposes of this section:

- a. "Denial of payment" means that the department has denied payment for a medical assistance claim or reduced the level of service payment for a service provided to an individual who was an eligible medical assistance recipient at the time the service was provided.**
- b. "Department" means the department of human services.**
- c. "Provider" means an individual, entity, or facility that furnishes medical or remedial services or supplies pursuant to a provider agreement with the department.**

2. A provider may request a review of denial of payment under this section by filing within thirty days of the date of the department's denial of the claim a written notice with the department which includes a statement of each disputed item and the reason or basis for the dispute. A provider

may not request review under this section of the rate paid for a particular service.

3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits and other written information that support the provider's request for review, together with a computation and the dollar amount that reflects the provider's claim as to the correct computation and dollar amount for each disputed item.
4. The department shall assign to a provider's request for review someone other than any individual who was involved in the initial denial of the claim. A provider who has requested review may contact the department for an informal conference regarding the review anytime before the department has issued its final decision.
5. The department shall make and issue its final decision within seventy-five days of receipt of the notice of request for review. The department's final decision must conform to the requirements of section 28-32-39. A provider may appeal the final decision of the department to the district court in the manner provided in section 28-32-42, and the district court shall review the department's final decision in the manner provided in section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in section 28-32-49.
6. Upon receipt of notice that the provider has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits and other written information submitted by the provider or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of section 28-32-44.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 426

HOUSE BILL NO. 1148

(Human Services Committee)

(At the request of the Department of Human Services)

MEDICAL ASSISTANCE RECIPIENT SERVICES

AN ACT to create and enact two new sections to Senate Bill No. 2185, as approved by the fifty-ninth legislative assembly, relating to the effective date of the medical assistance buy-in program for individuals with disabilities; to amend and reenact section 50-24.1-18.1 of the North Dakota Century Code, relating to personal care services for eligible medical assistance recipients who are residing in their own homes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-18.1. ~~(Effective through June 30, 2005)~~ Personal care services - Residing at home. Subject to the requirements under title 42, Code of Federal Regulations, part 440, section 167, the department of human services shall provide personal care services for eligible medical assistance recipients who are residing in their own homes. The department shall seek a waiver of federal law to permit disabled and elderly individuals to direct their own care and to permit personal care services authorized under this section to be provided by nonlicensed personal care service providers.

SECTION 2. Two new sections to Senate Bill No. 2185, as approved by the fifty-ninth legislative assembly, are created and enacted as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

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

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 427**SENATE BILL NO. 2342**

(Senators Thane, Fischer, Mathern)
(Representatives Aarsvold, Hawken)

**DEVELOPMENTAL DISABILITIES SERVICE
PROVIDERS COST INDEX**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to developmental disabilities service providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Operating costs for developmental disabilities service providers. The department of human services shall determine annual payment rates for private, licensed developmental disability providers by applying the inflation rate for these providers used to develop the legislative appropriation for the department.

Approved April 20, 2005
Filed April 20, 2005

CHAPTER 428

HOUSE BILL NO. 1465

(Representatives Price, Delzer, Devlin)
(Senators Brown, Fischer, J. Lee)

MEDICAL ASSISTANCE PROGRAM MANAGEMENT

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the management of the state medical assistance program; to provide for a report; 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 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance and medicare prescription drug management program. The department of human services, with respect to the state medical assistance program, shall develop a plan for the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The department may purchase the services of an outside consultant to assist in the development of the plan. The requirements of chapter 54-44.4 do not apply to the purchase of the consultant services. The department may not pay for:

1. A prescription drug that is within a class of drugs covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed to a medical assistance recipient who is also a medicare beneficiary.
2. A prescription drug that is not covered and for which no drug in its class is covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed for an individual who is a medical assistance recipient and a medicare beneficiary unless federal medical assistance matching funds are available at no less than the federal medical assistance percentage and the department determines that the drug is medically necessary for the individual.
3. A prescription drug for which federal medical assistance matching funds are not available except that until February 15, 2006, the department may pay for the drug in an emergency to ensure that a medical assistance recipient who is also a medicare beneficiary may continue to receive appropriate medications after implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1].

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall report to the legislative council regarding the department's progress in developing and implementing the plan provided for in section 1 of this Act.

SECTION 3. APPROPRIATION. There is 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 department of human services for the purpose of supplementing other appropriations provided for the medical assistance program to defray the expenses associated with developing and implementing the plan described in section 1 of this Act beginning with the effective date of this Act and ending June 30, 2007.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 429

SENATE BILL NO. 2354

(Senator Espegard)
(Representative Keiser)

CHARITABLE SOLICITATIONS REGULATION

AN ACT to amend and reenact subsection 2 of section 50-22-01, subsection 2 of section 50-22-02, and section 50-22-02.2 of the North Dakota Century Code, relating to charitable solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-22-01 of the North Dakota Century Code is amended and reenacted as follows:

2. a. "Charitable organization" means a person that engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office, or similar affiliate or a person soliciting contributions within the state for a parent charitable organization.
- b. The term "charitable organization" does not include:
 - (1) An organization that solicits funds for an institution of higher learning.
 - (2) An organization that uses only volunteer unpaid fundraisers and that solicits funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.
 - (3) A private or public elementary or secondary school.
 - (4) A charitable organization or person that solicits contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.
 - (5) A religious society or organization that is exempt from filing a federal annual information return pursuant to Internal Revenue Code section 6033(a)(2)(A)(i) and (iii) [26 U.S.C. 6033(a)(2)(A)(i) and (iii)] ~~and~~ or Internal Revenue Code section 6033(a)(2)(C)(i) [26 U.S.C. 6033(a)(2)(C)(i)].
 - (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.

SECTION 2. AMENDMENT. Subsection 2 of section 50-22-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The registration statement filed by a charitable organization must include a registration fee of twenty-five dollars and a financial statement of the organization's operation for its most recent twelve-month period immediately preceding the filing of the first registration statement. An initial registration filed by a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 is valid until September first of the subsequent year. The registration continues unless revoked by a court of competent jurisdiction, by the secretary of state, or as provided in this chapter. If a charitable organization fails to file a registration statement or other information required to be filed by the secretary of state under this chapter, or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration. An adjudicative proceeding under this chapter must be conducted in accordance with chapter 28-32 unless otherwise provided in this chapter. A notice required under this chapter or chapter 28-32 may be made by certified mail. In the event of revocation, the secretary of state ~~still~~ shall retain the registration fee.

SECTION 3. AMENDMENT. Section 50-22-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-02.2. Licensee Registrant name registration or certificate of authority required. The secretary of state may not issue or renew a ~~license registration~~ provided for in this chapter if the name of the ~~licensee registrant~~ 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. For a registrant that is a foreign entity, a registration under this chapter means the same as a license or permit under section 10-19.1-134, 10-32-137, 10-33-127, or 45-22-19, or other substantially equivalent statute for the purpose of procuring a certificate of authority or similar authorization to act in this state.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 430

HOUSE BILL NO. 1217

(Representatives Keiser, Price, Weisz)

INSURANCE EFFECT ON MEDICAL ASSISTANCE BENEFITS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to eligibility for medical assistance benefits and long-term care insurance; to provide for a report; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Effect of purchase of long-term care insurance on eligibility for medical assistance benefits.

1. Notwithstanding any other provision of law to the contrary, the assets of an individual must be disregarded when determining medical assistance eligibility if the individual owns a long-term care insurance policy as described in this section and purchased before application for medical assistance was made. For purposes of this section, assets mean any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether presently vested with possessory rights and that would be considered in determining eligibility for medical assistance. The following asset disregards must be applied:
 - a. A one dollar increase in the medical assistance asset limit must be granted to an individual who is the beneficiary of a long-term care insurance policy that meets the requirements of this section for each one dollar of benefit paid out under the individual's long-term care insurance policy for long-term care services; or
 - b. The total assets an individual owns and may retain and still qualify for medical assistance benefits at the time the individual applies for benefits must be disregarded if the individual is the beneficiary of a long-term care insurance policy that meets the requirements of this section, provides maximum benefits at the time of purchase of at least the total asset protection amount in effect at the time of purchase, and includes a provision under which the daily benefit increases by at least five percent per year compounded at least annually, and that individual has exhausted the benefits of the long-term care insurance policy.
2. As used in this section, long-term care insurance has the meaning set forth in section 26.1-45-01.
3. As used in this section, "total asset protection amount" means a maximum benefit equal to one hundred sixty-four thousand two hundred

fifty dollars for policies purchased during 2005 and that amount plus an additional five percent compounded annually for policies purchased in any year after 2005.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. Before November 1, 2005, the department of human services shall report to the legislative council regarding the status of the amendment to the medicaid state plan regarding the disregard of any assets to the extent that payments are made under a long-term care insurance policy or because an individual has received or is entitled to receive benefits under a long-term care insurance policy.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on the date the department of human services certifies to the legislative council that an amendment to the medicaid state plan has been approved that provides for the disregard of any assets to the extent that payments are made under a long-term care insurance policy or because an individual has received or is entitled to receive benefits under a long-term care insurance policy.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 431

HOUSE BILL NO. 1281

(Representatives Kreidt, Galvin, Uglem)

(Senator J. Lee)

MEDICAL ASSISTANCE AND LONG-TERM CARE FACILITIES

AN ACT to create and enact two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance eligibility and long-term care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 50-24.1 of the North Dakota Century Code are created and enacted as follows:

Long-term care facility information. A long-term care facility may request that an applicant for admission, a resident of the facility, or the applicant's or resident's legal representative furnish financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. A long-term care facility may deny admission to an applicant for admission who is unable to verify a viable payment source.

Long-term care facility resident - Medical assistance eligibility. An individual is not ineligible for medical assistance if application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that:

1. For periods after the return, all income or assets constituting the disqualifying transfer have been transferred or assigned back to the individual and the individual is otherwise eligible for medical assistance; or
2. Compensation equal to the fair market value of the income or asset at time of transfer is paid to, or on behalf of, the individual for nursing care and services provided by a long-term care facility and the individual is otherwise eligible for medical assistance.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 432

HOUSE BILL NO. 1252

(Representatives Delzer, Devlin, Kreidt)
(Senators Brown, Fischer, J. Lee)

NURSING HOME AND BASIC CARE RATES

AN ACT to amend and reenact sections 50-24.4-06 and 50-24.4-10, subsection 1 of section 50-24.4-11, sections 50-24.4-13, 50-24.4-14, 50-24.4-16, 50-24.4-19, and 50-24.4-27, and subsection 3 of section 50-24.5-02 of the North Dakota Century Code, relating to nursing home rates and basic care rates; and to repeal section 50-24.4-09 of the North Dakota Century Code, relating to interim rates for nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination. The department shall determine prospective payment rates for resident care costs. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.

The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.

SECTION 2. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs after January 1, 1990.

1. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall establish procedures for determining per diem reimbursement for operating costs.
2. ~~The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.~~
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.
4. 3. 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. For the rate year beginning 2006, the department shall establish limits for cost categories using the June 30, 2003, cost report year as the base period. The limits may not fall below the median of the most recent cost report. Until the a new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5 by the inflation rate for nursing home services used to develop the legislative appropriation for the department. 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 indirect care cost 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 for indirect care costs. The department may establish efficiency 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.~~

5. ~~The department shall establish a composite index or indices 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.~~
6. 4. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the ~~appropriate index established in subsection 5~~ inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to subsection 4 3 or the limit for the operating cost category increased by the same ~~index~~ inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In

establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

7. 5. Effective July 1, 1991, the ~~The~~ efficiency incentives to be established by the department pursuant to subsection 4 3 for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation ~~indices~~ rates, and the limit rate, exclusive of current inflation ~~indices~~ rates. The efficiency incentive must be included as a part of the indirect care cost rate.
8. 6. Effective July 1, 1991, each ~~Each~~ nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care costs and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care cost categories.
7. A new base period must be established at least every four years beginning with the cost report period June 30, 2006.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.4-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~For rate years beginning on or after January 1, 1991, the~~ The department may allow a one-time adjustment to historical operating costs of a nursing home that has been found by the department to be significantly below care related minimum standards appropriate to the mix of resident needs in that nursing home when it is determined by the department that the nursing home is unable to meet minimum standards through reallocation of nursing home costs and efficiency incentives or allowances. In developing procedures to allow adjustments, the department shall specify the terms and conditions governing any additional payments made to a nursing home as a result of the adjustment. The department shall establish procedures to recover amounts paid under this section, in whole or in part, and to adjust current and future rates, for nursing homes that fail to use the adjustment to satisfy care related minimum standards.

SECTION 4. AMENDMENT. Section 50-24.4-13 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for nongeriatric individuals with physical disabilities or units within nursing homes which exclusively provide geropsychiatric services, such nursing homes or units within nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of any cost categories. Each of these nursing homes or units within nursing homes shall receive its actual allowed historical operating cost per diem adjusted by a ~~percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 50-24.4-10~~ the inflation rate for nursing home services used to develop the legislative appropriation for the department, and which the department determines to be relevant to residential services for nongeriatric individuals with physical disabilities or geropsychiatric services.

SECTION 5. AMENDMENT. Section 50-24.4-14 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-14. General and administrative costs after January 1, 1990. ~~For rate years beginning on or after January 1, 1990, all~~ All general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services ~~in~~ for the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.
5. The consultant's full-time responsibilities are to provide the services identified in this section.

SECTION 6. AMENDMENT. Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-16. Special rates.

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the ~~percentile for any group~~ limits of any cost category, the department shall establish procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than eighteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up for periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities ~~for rate periods beginning on or after January 1, 1990.~~

SECTION 7. AMENDMENT. Section 50-24.4-19 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-19. Prohibited practices. ~~From and after January 1, 1990, a~~ A nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department of human services. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable ~~attorneys'~~ attorney's fees or their equivalent.
2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.

- b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this chapter.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the nursing home except as payment for the fair market value of renting or leasing space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.
7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.
9. Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 8. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification. All nursing facilities certified under the medical assistance program shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. ~~Medicare review must be conducted at the time of the annual medical assistance review.~~ Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 9. AMENDMENT. Subsection 3 of section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department adjusted by the inflation rate for basic care services used to develop the legislative appropriation for the department.

SECTION 10. REPEAL. Section 50-24.4-09 of the North Dakota Century Code is repealed.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 433

HOUSE BILL NO. 1470

(Representatives Devlin, Nelson, Sandvig, Weisz)
(Senators Fischer, Mathern)

DRUG USE REVIEW AND PRIOR AUTHORIZATION

AN ACT to amend and reenact subsection 2 of section 50-24.6-02 and section 50-24.6-04 of the North Dakota Century Code, relating to the membership of the drug use review board and the prior authorization program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of ~~fifteen~~ sixteen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. ~~The executive director of the department shall appoint the remaining thirteen board members.~~ A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have participated in programs in which prior authorization is used. The appointed members of the board must be:
 - a. ~~Six~~ Four physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, ~~and four of whom are chosen from a list of nominees provided~~ appointed by the North Dakota medical association;
 - b. ~~Six~~ Two physicians licensed in this state and actively engaged in the practice of medicine, appointed by the executive director of the department;
 - c. Four pharmacists licensed in this state and actively engaged in the practice of pharmacy, ~~four of whom are chosen from a list of nominees provided~~ appointed by the North Dakota pharmaceutical association; ~~and~~
 - d. Two pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the executive director of the department;
 - e. One individual who represents consumer interests, appointed by the governor; and
 - e. f. One pharmacist or physician representing the pharmaceutical industry who is chosen from a list of nominees provided appointed by the pharmaceutical research manufacturers of America.

SECTION 2. AMENDMENT. Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

50-24.6-04. Prior authorization program.

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
 - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
 - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
 - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
3. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses, such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:
 - a. Acquired immune deficiency syndrome or human immunodeficiency virus; and
 - b. Cancer.
4. 5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
 - a. Establish policies and procedures necessary to implement the prior authorization program.

- b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
- c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

SECTION 3. EXPIRATION DATE. Section 2 of this Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 434

SENATE BILL NO. 2383

(Senators Fischer, Dever, J. Lee)
(Representatives Delmore, D. Johnson, Weisz)

CHILDREN'S ADVOCACY CENTERS

AN ACT to create and enact a new subsection to section 50-25.1-02 of the North Dakota Century Code, relating to the definition of children's advocacy center; to amend and reenact section 50-25.1-05 and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to the role of children's advocacy centers in the investigation of child abuse and neglect; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1.** A new subsection to section 50-25.1-02 of the North Dakota Century Code is created and enacted as follows:

"Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.

SECTION 2. AMENDMENT. Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05. Assessment. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services. The department or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The department or law enforcement

²¹⁸ Section 50-25.1-02 was also amended by section 14 of Senate Bill No. 2149, chapter 418.

agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

²¹⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Authorized staff of the department, appropriate county social service boards, children's advocacy centers, and appropriate state and local child protection team members.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the expenses of North Dakota children's advocacy centers, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 19, 2005

Filed April 20, 2005

²¹⁹ Section 50-25.1-11 was also amended by section 17 of Senate Bill No. 2149, chapter 418.

CHAPTER 435**HOUSE BILL NO. 1267**

(Representatives Sitte, Koppelman, Metcalf, Price)
(Senators Dever, Syverson)

CHILD PROTECTIVE SERVICES DUTIES

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the duties of the department of human services with respect to child protective services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Child protective services duties - Training requirements.

1. The department, at the initial time of contact with an individual subject to a child abuse or neglect assessment, shall advise the individual of the specific complaints or allegations made against the individual.
2. The department shall provide training to all representatives of the child protective services system regarding the legal duties of the representatives. The training may consist of various methods of informing the representatives of these duties, to protect the legal rights and safety of children and families from the initial time of contact during assessment through treatment.
3. The department shall adopt rules to implement the requirements of this section.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 436

HOUSE BILL NO. 1204

(Representatives Devlin, Boucher, Delzer)
(Senators Andrist, Fischer, O'Connell)

NURSING FACILITY FUNDING POOL REPEAL

AN ACT to amend and reenact section 50-30-02 of the North Dakota Century Code, relating to the North Dakota health care trust fund; and to repeal section 50-24.4-30 of the North Dakota Century Code, relating to the government nursing facility funding pool.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.

1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund ~~and shall adopt procedures for participation by government nursing facilities.~~ The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:
 4. a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
 2. b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
 3. c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
2. The department shall continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.

SECTION 2. REPEAL. Section 50-24.4-30 of the North Dakota Century Code is repealed.

CHAPTER 437

HOUSE BILL NO. 1147

(Human Services Committee)

(At the request of the Department of Human Services)

ASSISTED LIVING FACILITIES

AN ACT to create and enact a new subsection to section 50-32-02 and a new section to chapter 50-32 of the North Dakota Century Code, relating to assisted living facilities; and to amend and reenact subsection 1 of section 23-09-01 and subsections 1 and 5 of section 50-32-01 of the North Dakota Century Code, relating to assisted living facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.

SECTION 2. AMENDMENT. Subsections 1 and 5 of section 50-32-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.
5. "Living unit" means a portion of an assisted living facility that contains a sleeping area, an entry door that can be locked, and a private bath with

²²⁰ Section 23-09-01 was also amended by section 14 of Senate Bill No. 2004, chapter 32.

a toilet, bathtub or shower, and sink and which is occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.

SECTION 3. A new subsection to section 50-32-02 of the North Dakota Century Code is created and enacted as follows:

No more than two people may occupy one bedroom of each living unit of an assisted living facility.

SECTION 4. A new section to chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

Continuation of existing licenses. An assisted living facility that possessed a valid license issued by the department of human services before the effective date of this Act may not be subsequently denied a license by the department of human services merely due to failure to meet the requirements of sections 23-09-01, 50-32-01, and 50-32-02 provided that the assisted living facility meets all other licensing requirements.

Approved March 4, 2005

Filed March 4, 2005

SALES AND EXCHANGES

CHAPTER 438

SENATE BILL NO. 2089

(Political Subdivisions Committee)

(At the request of the Public Service Commission)

AUCTIONEER AND CLERK LICENSE REVOCATION

AN ACT to amend and reenact section 51-05.1-01.1 of the North Dakota Century Code, relating to revocation of auctioneer and clerk licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds.

1. The initial application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not received by January thirty-first must be assessed an additional twenty-five dollar fee.
2. Before a license is issued to an auctioneer or ~~auction~~ clerk, the applicant must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for ~~an auction~~ a clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. When notice of cancellation is received by the commission, the commission, without hearing, shall revoke the license for which the bond was issued effective with the effective date of the cancellation, unless the licensee files a new bond or evidence that the bond will be reinstated before the effective date of the cancellation. The size of the licensee's bond must be clearly and prominently stated in all contracts with sellers.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 439

SENATE BILL NO. 2191

(Senators Brown, Klein, Robinson)
(Representatives Carlson, Thorpe, Vigesaa)

MOTOR VEHICLE WHOLESALE AND RETAIL CONTRACTS

AN ACT to create and enact sections 51-07-02.1, 51-07-02.2, and 51-07-02.3 of the North Dakota Century Code, relating to contractual relationships between automobile and truck wholesalers and retailers; to amend and reenact section 51-07-01.1 of the North Dakota Century Code, relating to the termination of a contractual relationship between automobile and truck wholesalers and retailers; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01.1. Termination of retail contract to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of merchandise and tools covered under section 51-07-01, ~~who~~ excluding automobile dealers, truck dealers, or parts dealers of the automobiles or trucks, that enters into a contract with any person engaged in the business of retailing the covered merchandise by which the retailer agrees to maintain a stock of the covered merchandise may not terminate, cancel, or fail to renew the contract with the retailer without good cause.
2. For the purpose of this section, good cause for terminating, canceling, or failing to renew a contract is limited to failure by the retailer to substantially comply with those essential and reasonable requirements imposed by the contract between the parties if the requirements are not different from those requirements imposed on other similarly situated retailers. ~~Further, the~~ The determination by the manufacturer, wholesaler, or distributor of good cause for the termination, cancellation, or failure to renew must be made in good faith.
3. In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor shall establish that the termination, cancellation, or failure to renew was made in good faith for good cause. If a notice of termination is issued and the dealer challenges the notice by filing an action, there is an automatic stay during the pendency of the action. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, the manufacturer, wholesaler, or distributor is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorney's fees for prosecuting the action and the plaintiff, if appropriate, is entitled to injunctive relief. ~~The provisions of this~~ This section apply applies to all contracts now in effect which

have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after July 31, 2003. Any contract in force and effect on August 1, 2003, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before August 1, 2003.

SECTION 2. Section 51-07-02.1 of the North Dakota Century Code is created and enacted as follows:

51-07-02.1. Change in automobile or truck franchise agreement - Notification requirements.

1. At least ninety days before any change in or from an existing contract which will substantially impair the sales, the service obligations, or investment of a retailer of automobiles or trucks, or parts of the automobiles or trucks, the manufacturer, wholesaler, or distributor that is a party to the contract shall give notice by certified mail to the retailer of the intended change and the specific grounds for the change.
2. If the manufacturer, wholesaler, or distributor fails to give the proper notice under subsection 1, the change is voidable at the option of the retailer.
3. A contract between a manufacturer, wholesaler, or distributor and a retailer of automobiles or trucks, or parts of the automobiles or trucks, is offered for automatic renewal under the same terms unless notice is provided under subsection 1.
4. A retailer may file an action against the manufacturer, wholesaler, or distributor for violation of this section or for a determination of whether the action proposed by the manufacturer, wholesaler, or distributor is an unfair or a prohibited change in or from the contract. Contracts and certificates of appointment continue in effect until final determination of the issues in the action.
5. A change in or from a contract is unfair and prohibited if the change is not clearly permitted by the agreement; is not taken in good faith; is not taken for good cause; is based on an alleged breach of the agreement which is not in fact a material and substantial breach; or, if the grounds relied on for the change have not been applied in a uniform and consistent manner by the manufacturer, wholesaler, or distributor. Good faith means honesty in fact and fair dealing. The manufacturer, wholesaler, or distributor shall have the burden of proof that any action taken by the manufacturer, wholesaler, or distributor is fair and not prohibited. A manufacturer, wholesaler, or distributor that fails to carry the burden of proof is liable for all special and general damages sustained by the retailer, including the costs of litigation and reasonable attorney's fees. If appropriate, the retailer is entitled to injunctive relief.

SECTION 3. Section 51-07-02.2 of the North Dakota Century Code is created and enacted as follows:

51-07-02.2. Dealership transfers. A retailer of automobiles or trucks, or parts for the automobiles or trucks, may not transfer, assign, or sell a franchise agreement to another person unless the retailer first provides written notice to the franchisor of the intended action. Within sixty days of receiving the notice, the

franchisor must approve or deny the action. If the franchisor denies the action, the franchisor shall provide material reasons for the denial to the franchisee. If the franchisor does not respond within the sixty-day period, the action is deemed approved. The refusal by the franchisor to accept a proposed transferee who meets the written, reasonable, and uniformly applied standards of qualifications of the franchisor relating to the financial qualifications of the transferee and business experience of the transferee is presumed to be unreasonable. If an action is rejected by the franchisor, the franchisee may file an action for determination of a violation of this section. The retailer may elect to pursue either the retailer's remedy under the contract or the remedy provided in this section. The franchisor has the burden of proof with respect to all issues raised in the action. The court shall approve the transfer unless the franchisor can prove the proposed transferee does not meet the written, reasonable, and uniformly applied standards regarding financial qualifications and business experience.

SECTION 4. Section 51-07-02.3 of the North Dakota Century Code is created and enacted as follows:

51-07-02.3. Prohibited acts. A manufacturer, wholesaler, or distributor of automobiles or trucks, or parts of the automobiles or trucks, that enters a contract with any person engaged in the business of selling or retailing automobiles, trucks, or parts for the automobiles or trucks, may not:

1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles, trucks, parts, or accessories that the retailer has not ordered voluntarily.
2. Condition or attempt to condition the sale of automobiles or trucks on a requirement that the automobile or truck retailer purchase other goods or services, except that the manufacturer, wholesaler, or distributor may require a retailer to purchase all parts reasonably necessary to maintain the quality of operation and telecommunications necessary to communicate with the manufacturer, wholesaler, or distributor.
3. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy the reasonable requirements of the manufacturer, wholesaler, or distributor.
4. Discriminate in the prices charged for automobiles or trucks of like grade and quality sold by automobile or truck manufacturers to similarly situated automobile or truck retailers. This prohibition does not prevent the use of differentials that solely make due allowance for differences in the cost of manufacture, sale, or delivery or for differing methods or quantities in which the automobiles or trucks are sold or delivered by the manufacturer, wholesaler, or distributor.
5. Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the competitive circumstances of the dealership contracts for any reason other than the failure of the automobile or truck retailer to comply with the terms of the contract between the parties, if the attempt or threat is based on the results of a circumstance beyond the retailer's control, including a natural disaster in the dealership market area or a labor dispute.

SECTION 5. APPLICATION OF ACT. This Act applies to all contracts in effect on August 1, 2005, which do not have an expiration date and are continuing contracts and all other contracts entered, amended, or renewed after July 31, 2005. Any contract in effect on August 1, 2005, which by its terms will terminate on a date subsequent to that date is governed by the law as it existed on July 31, 2005.

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 440

SENATE BILL NO. 2200

(Senators Holmberg, Trenbeath, Triplett)
(Representatives DeKrey, Delmore, Kretschmar)

MOTOR VEHICLE RECORDING DEVICES

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to recording devices on motor vehicles; and to provide for application.

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:

Recording devices on motor vehicles - Disclosure - Removal.

1. A manufacturer of a new motor vehicle sold or leased in this state which is equipped with a recording device commonly referred to as an event data recorder shall disclose by model year 2007 the presence, capacity, and capabilities of the event data recorder in the owner's manual for the vehicle. A motor vehicle dealer shall include within the purchase contract in a clear and conspicuous manner information on the possibility of a recording device. As used in this section, an event data recorder means a feature that is installed by the manufacturer of the vehicle and does any of the following for the purpose of retrieving data:
 - a. Records the speed of the vehicle and the direction the motor vehicle is traveling.
 - b. Records vehicle location data.
 - c. Records steering performance.
 - d. Records brake performance, including whether brakes were applied before an accident.
 - e. Records the driver's safety belt status.
 - f. Has the ability to transmit information concerning an accident in which the vehicle has been involved to a central communications system when an accident occurs.
2. Data recorded on an event data recorder may not be downloaded or otherwise retrieved by a person other than the owner of the motor vehicle at the time the data is recorded, or through consent by the owner's agent or legal representative, except under any of the following circumstances:
 - a. The data is retrieved for the purpose of improving motor vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, and the identity of the registered owner

or driver is not disclosed in connection with that retrieved data. The disclosure of the vehicle identification number, with the last four digits deleted, for the purpose of improving vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, does not constitute the disclosure of the identity of the registered owner or driver. A person authorized to download or otherwise retrieve data from a recording device under this subdivision may not release that data, except to share the data among the motor vehicle safety and medical research communities to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.

- b. The data is retrieved by a licensed motor vehicle dealer or by an automotive technician for the purpose of diagnosing, servicing, or repairing the motor vehicle.
 - c. By stipulation of the parties to the proceeding or by order of the court.
3. "Owner" means a person having all the incidents of ownership, including the legal title of a vehicle regardless of whether the person lends, rents, or creates a security interest in the vehicle; a person entitled to the possession of a vehicle as the purchaser under a security agreement; or the person entitled to possession of the vehicle as lessee pursuant to a written lease agreement, if the agreement at inception is for a period in excess of three months.
4. A person, including a service or data processor operating on behalf of the person, authorized to download or otherwise retrieve data from an event data recorder pursuant to subdivision a of subsection 2 may not release that data except for the purposes of motor vehicle safety and medical communities to advance motor vehicle safety, security, or traffic management; or to a data processor solely for the purposes permitted by this subsection and only if the identity of the owner or driver of the vehicle is not disclosed.
5. If a motor vehicle is equipped with a recording device that is capable of recording or transmitting information relating to vehicle location data or concerning an accident to a central communications system and that capability is part of a subscription service, the fact that the information may be recorded or transmitted must be disclosed in the terms and conditions of the subscription service. Subsection 2 does not apply to a subscription service that meets the requirements of this subsection.
6. An insurer may not require as a condition of insurability consent of the owner for access to data that may be stored within an event data recorder and may not use data retrieved with the owners consent before or after an accident for the purpose of rate assessment.

SECTION 2. APPLICATION. This Act applies to all motor vehicles manufactured after July 31, 2005.

CHAPTER 441

HOUSE BILL NO. 1284

(Representatives Wrangham, S. Meyer)
(Senator Traynor)

FALSE AND MISLEADING ADVERTISING

AN ACT to amend and reenact section 51-12-01 of the North Dakota Century Code, relating to false and misleading advertising; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

51-12-01. False and misleading advertising prohibited.

1. No person; ~~firm, corporation, limited liability company, or association~~ with intent to sell, dispose of, increase the consumption of, or induce the public to enter ~~into~~ an obligation relative to, or to acquire title or interest in any food, drug, medicine, patent and proprietary product, merchandise, security, service, ~~performance~~, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public, may make, publish, disseminate, circulate, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, or in any other way, an advertisement ~~which~~ that contains any assertion, representation, or statement of fact, including the price thereof, which is untrue, deceptive, or misleading regarding such food, drug, medicine, patent and proprietary product, merchandise, security, service, ~~performance~~, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 442

SENATE BILL NO. 2231

(Senators Erbele, Hacker)
(Representatives Brandenburg, Kretschmar, Sandvig)

PRODUCT REBATES

AN ACT to create and enact a new section to chapter 51-12 of the North Dakota Century Code, relating to product rebates; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-12 of the North Dakota Century Code is created and enacted as follows:

Product rebates - Acceptable mailing addresses. A person who is eligible to receive a mail-in rebate for the purchase of a product or merchandise must be given the option of providing either a street address or a post-office box number as a mailing address.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 443

SENATE BILL NO. 2249

(Senators Holmberg, Dever, Wardner)
(Representatives Delmore, Hawken, Kasper)

CREDIT CARD RECEIPT AND SOLICITATION REGULATION

AN ACT to amend and reenact sections 51-07-27, 51-18-01, 51-18-04.2, 51-18-04.3, 51-18-09, and 51-28-06 of the North Dakota Century Code, relating to restrictions on electronically printed credit card receipts, regulation of home solicitation sales, and prohibited telephone solicitations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-27 of the North Dakota Century Code is amended and reenacted as follows:

51-07-27. Restrictions on electronically printed credit card receipts - Penalty. Except as otherwise provided under this section, a person that accepts credit cards for the transaction of business and also electronically prints receipts for these credit card transactions may not print on the receipt provided to the customer more than the last five digits of the credit card account number nor print on the receipt provided to the customer the expiration date of the credit card. This section does not apply to a credit card transaction in which the sole means of recording the customer's credit card number is by handwriting or by an imprint or copy of the credit card. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004. A person who violates this section is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 51-18-01 of the North Dakota Century Code is amended and reenacted as follows:

51-18-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
2. "Person" includes a corporation, limited liability company, company, partnership, firm, association, or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state, or country, or any political subdivision of this state which may lawfully own any property, or

a public or private corporation, limited liability company, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, limited liability company, partnership, or any association of persons.

3. "Personal solicitation sale" means a sale, lease, or rental of consumer goods or services in which the seller or the seller's representative solicits the sale, lease, or rental, by telephone or in person, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the person soliciting the same and that agreement or offer to purchase is there given to the seller or the seller's representative. A transaction is not a personal solicitation sale if it is made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, lease, or rental.
4. "Seller" means a person who makes a personal solicitation sale.
5. "Seller's representative" means a person who makes a personal solicitation sale on behalf of a seller.
6. "Telepromoter" means any person who, individually, through salespersons or agents, or through the use of an automatic dialing-announcing device initiates telephone contact with a consumer or who by written notice requests that the consumer contact the person by telephone and who represents one or more of the following:
 - a. That if the consumer buys one or more items from the telepromoter, the consumer will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of those items.
 - b. That a consumer will receive a prize, premium, or gift if the telepromoter also encourages the consumer to do either of the following:
 - (1) Purchase or rent any goods or services.
 - (2) Pay any money, including a delivery or handling charge.
 - c. That the consumer has in any manner been specially selected to receive the written notice or the offer contained in the written notice.

The term does not include any nonprofit or charitable organization exempt from federal taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. section 501(c)(3)].

SECTION 3. AMENDMENT. Section 51-18-04.2 of the North Dakota Century Code is amended and reenacted as follows:

51-18-04.2. Credit card charges. A telepromoter, seller, or seller's representative, in a personal solicitation sale, may not make or submit any charge to the consumer's credit card or bank account, or otherwise solicit or accept any advance payment, until the telepromoter, seller, or seller's representative has

received from the consumer an original copy of a contract that complies with this section.

SECTION 4. AMENDMENT. Section 51-18-04.3 of the North Dakota Century Code is amended and reenacted as follows:

51-18-04.3. Agreement by telepromoter or seller in violation of chapter void. Any agreement for sale, lease, or ~~rent~~ rental of a consumer good or service in a personal solicitation sale by a telepromoter, seller, or seller's representative in violation of this chapter is unenforceable and void.

SECTION 5. AMENDMENT. Section 51-18-09 of the North Dakota Century Code is amended and reenacted as follows:

51-18-09. ~~Penalty Enforcement - Powers - Remedies - Penalty.~~ Any person who violates any provision of this chapter is guilty of a class B misdemeanor. The state's attorney or attorney general may enforce this chapter. The attorney general in enforcing this chapter has all the powers provided in this chapter and chapter 51-15 and may seek all remedies in this chapter and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

SECTION 6. AMENDMENT. Section 51-28-06 of the North Dakota Century Code is amended and reenacted as follows:

51-28-06. Prohibited telephone solicitations. A caller may not make or cause to be made any telephone solicitation to the telephone line of any subscriber in this state who, for at least ~~ninety~~ thirty-one days before the date the call is made, has been on the do-not-call list established and maintained or used by the attorney general under section 51-28-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 444

HOUSE BILL NO. 1305

(Representatives Keiser, Price)
(Senators Kilzer, J. Lee)

TOBACCO MANUFACTURER ESCROW RELEASE

AN ACT to amend and reenact paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code, relating to release of escrow funds deposited by tobacco product manufacturers; and to provide a savings clause.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code is amended and reenacted as follows:

- (2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to the such tobacco product manufacturer; or

SECTION 2. SAVINGS CLAUSE. If any portion of the amendment to paragraph 2 of subdivision b of subsection 2 of section 51-25-02 in section 1 of this Act is held by a court of competent jurisdiction to be unconstitutional, then paragraph 2 is deemed to be invalidated in its entirety. If subdivision b of subsection 2 of section 51-25-02 is thereafter held by a court of competent jurisdiction to be unconstitutional, then section 1 of this Act is deemed invalidated, and paragraph 2 of subdivision b of subsection 2 of section 51-25-02 is restored as it existed on the day before the effective date of this Act. Neither any holding of unconstitutionality nor the invalidation of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 affects, impairs, or invalidates any other portion of section 51-25-02 or the application of that section to any other person or circumstance and the remaining portions of section 51-25-02 at all times will continue in full force and effect.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 445

HOUSE BILL NO. 1219

(Representatives Porter, Bellew)

(Senator Krebsbach)

AUTOMATED EMERGENCY NOTIFICATIONS

AN ACT to amend and reenact sections 51-28-02 and 57-40.6-07 of the North Dakota Century Code, relating to the use of unpublished names and telephone numbers for automated emergency notifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-28-02 of the North Dakota Century Code is amended and reenacted as follows:

51-28-02. Use of prerecorded or synthesized voice messages. A caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to ~~messages~~ a message from a public safety agency notifying a person of an emergency; a message from a school district to students a student, parents a parent, or employees, messages an employee; a message to subscribers a subscriber with whom the caller has a current business relationship; or messages a message advising employees an employee of a work schedules schedule.

SECTION 2. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. Unpublished names and telephone numbers generated by a 911 coordinator or 911 public safety answering point or provided to a 911 coordinator or public safety answering point under section 57-40.6-06 are confidential and may be used only for verifying the location or identity, or both, for response purposes, of a person calling a 911 answering point for emergency help or by the 911 coordinator or public safety answering point for the purpose of a public safety agency notifying a person of an emergency. Published names and telephone numbers maintained by a 911 coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the 911 coordinator for the purpose of verifying and correcting names and addresses used for official purposes.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 446

SENATE BILL NO. 2335

(Senators Holmberg, Hacker, Nelson)
(Representatives Charging, Delzer, Owens)

GIFT CERTIFICATE EXPIRATION AND FEES

AN ACT to create and enact chapter 51-29 of the North Dakota Century Code, relating to gift certificate sales, expiration dates, and service or maintenance fees; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-29 of the North Dakota Century Code is created and enacted as follows:

51-29-01. Definition. As used in this chapter, "gift certificate" means a record evidencing a promise, made for monetary consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record. The term includes a record that contains a microprocessor chip, magnetic strip, or other means of storage of information that is prefunded and for which the value is decreased upon each use; a gift card; an electronic gift card; an online gift account; a stored-value card; a store card; a prepaid telephone card; or a similar record or card.

The term does not include a general-use prepaid card issued by a prepaid card issuer, including a plastic card or other electronic payment device that is usable at multiple, unaffiliated merchants or service providers or at an automatic teller machine, and purchased or loaded on a prepaid basis; a general-use prepaid card issued by a prepaid card issuer and purchased by a person that is not an individual; or a debit card linked to a deposit account.

51-29-02. Expiration dates - Service fees. A person may not charge additional monthly or annual service or maintenance fees on a gift certificate. A person may not limit the time for redemption of a gift certificate to a date before six years after the date of purchase of the gift certificate, place an expiration date on a gift certificate before six years after the date of purchase of the gift certificate, or include on a gift certificate any statement suggesting that an expiration or redemption date, except as permitted in this section, may apply to a gift certificate.

This section does not apply to a gift certificate distributed to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer. Any restriction or limitation on such gift certificate must be disclosed to the consumer, in writing, at the time the gift certificate is distributed to the consumer.

51-29-03. Enforcement - Powers - Remedies - Penalties. The attorney general shall enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law.

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

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 447**SENATE BILL NO. 2251**

(Senators Trenbeath, Espegard, J. Lee)
(Representatives Aarsvold, Headland, Horter)

**PERSONAL IDENTIFYING INFORMATION USE
CRIMES**

AN ACT to create and enact chapter 51-30 of the North Dakota Century Code, relating to requiring disclosure to consumers of a breach in security by businesses maintaining personal information in electronic form; to amend and reenact sections 12.1-23-11 and 12.1-23-12 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information, penalties, prosecution of offenses in multiple counties, and jurisdiction in offenses involving conduct outside this state; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-11. Unauthorized use of personal identifying information -
Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section ~~39-04-14~~ 39-06-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individual's employer;
 - h. The maiden name of the individual's mother; or

²²¹ Section 12.1-23-11 was also amended by section 1 of House Bill No. 1211, chapter 116.

- i. The identifying number of a depository account in a financial institution; or
 - j. An individual's birth, death, or marriage certificate.
2. A person is guilty of ~~a class C felony~~ an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

²²² **SECTION 2. AMENDMENT.** Section 12.1-23-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-12. Jurisdiction - Conduct outside this state. Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive such person of property is subject to prosecution under this chapter in the courts of this state. The Except as provided in section 12.1-23-11, the venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

SECTION 3. Chapter 51-30 of the North Dakota Century Code is created and enacted as follows:

51-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

²²² Section 12.1-23-12 was also amended by section 2 of House Bill No. 1211, chapter 116.

1. "Breach of the security system" means unauthorized acquisition of computerized data when access to personal information has not been secured by encryption or by any other method or technology that renders the electronic files, media, or data bases unreadable or unusable. Good-faith acquisition of personal information by an employee or agent of the person is not a breach of the security of the system, if the personal information is not used or subject to further unauthorized disclosure.
2. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
 - (1) The individual's social security number;
 - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
 - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
 - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code or password that would permit access to an individual's financial accounts;
 - (5) The individual's date of birth;
 - (6) The maiden name of the individual's mother;
 - (7) An identification number assigned to the individual by the individual's employer; or
 - (8) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

51-30-02. Notice to consumers. Any person that conducts business in this state, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of the state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in section 51-30-04, or any measures necessary to determine the scope of the breach and to restore the integrity of the data system.

51-30-03. Notice to owner or licensee of personal information. Any person that maintains computerized data that includes personal information that the person does not own shall notify the owner or licensee of the information of the breach of the security of the data immediately following the discovery, if the personal

information was, or is reasonably believed to have been, acquired by an unauthorized person.

51-30-04. Delayed notice. The notification required by this chapter may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this chapter must be made after the law enforcement agency determines that the notification will not compromise the investigation.

51-30-05. Method of notice. Notice under this chapter may be provided by one of the following methods:

1. Written notice;
2. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 7001 of title 15 of the United States Code; or
3. Substitute notice, if the person demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the person does not have sufficient contact information. Substitute notice consists of the following:
 - a. E-mail notice when the person has an e-mail address for the subject persons;
 - b. Conspicuous posting of the notice on the person's web site page, if the person maintains one; and
 - c. Notification to major statewide media.

51-30-06. Alternate compliance. Notwithstanding section 51-30-05, a person that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this chapter is deemed to be in compliance with the notification requirements of this chapter if the person notifies subject individuals in accordance with its policies in the event of a breach of security of the system. A financial institution, trust company, or credit union that is subject to, examined for, and in compliance with the federal interagency guidance on response programs for unauthorized access to customer information and customer notice is deemed to be in compliance with this chapter.

51-30-07. Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on June 1, 2005.

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

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 448

HOUSE BILL NO. 1500

(Representatives Koppelman, L. Meier, S. Meyer)
(Senators Syverson, Taylor, Tollefson)

IDENTITY FRAUD

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to identity fraud; 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.

1. "Consumer" means an individual.
2. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d).
3. "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate or intrastate commerce for the purpose of preparing or furnishing consumer reports. The term does not include an agency that compiles and maintains files on consumers on a nationwide basis, as described in 15 U.S.C. 1681a(p), a "reseller" as defined in 15 U.S.C. 1681a(u), when engaged in the act of the reselling of consumer information or other information, or a "nationwide specialty consumer reporting agency" that maintains "check writing history" as defined in 15 U.S.C. 1681a(w)(3).
4. "File", when used in connection with information on any consumer, means all of the information on that consumer reported and retained by a consumer reporting agency regardless of how the information is stored.

Initial fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall include a fraud alert in the file of that consumer. The consumer reporting agency shall continue that alert along with any credit score generated in using that file, for a period of not less than ninety days beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be removed before the end of the period and the agency has received appropriate proof of the identity of the requester for that purpose.

Extended fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

1. Include a fraud alert in the file of that consumer and continue that alert along with any credit score generated in using that file, during the seven-year period beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be removed before the end of that period and the agency has received appropriate proof of the identity of the requester for that purpose; and
2. During the five-year period beginning on the date of the request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or the consumer's representative requests that the exclusion be rescinded before the end of that period.

Police reports - Judicial determination of factual innocence.

1. An individual who has learned or reasonably suspects that the individual's personal identifying information has been unlawfully used by another, as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the individual's residence. The law enforcement agency shall take a report of the matter, provide the individual with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.
2. An individual who reasonably believes that the individual is the victim of identity theft may petition the district court in the county in which the alleged victim resides or in which the identity theft is alleged to have occurred, or the court, on its own motion or upon application of the state's attorney, may move for an expedited judicial determination of the individual's factual innocence, if the perpetrator of the identity theft was arrested, cited, or convicted of a crime under the victim's identity, if a criminal complaint has been filed against the perpetrator in the victim's name, or if the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made under this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. If the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the

victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying that determination.

3. After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.
4. A court that has issued a determination of factual innocence under this section may vacate that determination if the petition or any information submitted in support of the petition is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 449

HOUSE BILL NO. 1522

(Representatives Carlson, Price)
(Senator Wardner)

TOBACCO REGULATION

AN ACT to create and enact chapter 51-30 of the North Dakota Century Code, relating to regulation of sale and delivery of tobacco products; to amend and reenact section 57-36-27 of the North Dakota Century Code, relating to consumer's use tax; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-30 of the North Dakota Century Code is created and enacted as follows:

51-30-01. Prohibited acts regarding sale of tobacco products to minors.

It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:

1. Before mailing or shipping the product, the person receives from the individual who places the order the following:
 - a. A copy of a valid government-issued document that provides the name, address, and date of birth of the individual; and
 - b. A signed statement from the individual providing a certification that the individual:
 - (1) Is a smoker of legal minimum purchase age in the state;
 - (2) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
 - (3) Understands that providing false information may constitute a violation of law.
2. Before mailing or shipping the product, the person:
 - a. Verifies the date of birth or age of the individual against a commercially available data base; or
 - b. Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order.

3. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 51-30-04.
4. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.
5.
 - a. The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:
 - (1) Be the addressee;
 - (2) Have an individual of legal minimum purchase age sign for delivery of the package; and
 - (3) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.
 - b. The bill of lading clearly states the requirements in subdivision a and specifies that state law requires compliance with the requirements.
6. The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document.

51-30-02. Rule of construction regarding common carriers. This chapter may not be construed as imposing liability upon any common carrier, or officer or employee of the carrier when acting within the scope of business of the common carrier.

51-30-03. E-mail addresses. A person taking a delivery sale order may request that a prospective purchaser provide an e-mail address for the purchaser.

51-30-04. Disclosure requirements. The notice required under subsection 3 of section 51-30-01 must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 51-30-01; and

4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale.

51-30-05. Registration and reporting requirements.

1. Before making a delivery sale or shipping cigarettes in connection with a sale, a person shall file with the tax commissioner a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.
2. Not later than the tenth day of each month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any sale during the previous calendar month shall file with the tax commissioner a memorandum or a copy of the invoice, which provides for each delivery sale:
 - a. The name and address of the individual to whom the delivery sale was made;
 - b. The brand of the cigarettes that were sold in the delivery sale; and
 - c. The quantity of cigarettes that were sold in the delivery sale.

51-30-06. Taxes. Each person accepting a purchase order for a delivery sale of any tobacco product shall remit to the tax commissioner any taxes due under chapter 57-36 with respect to the delivery sale. This section does not apply if the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes already have been paid to this state.

51-30-07. Penalties.

1. Except as otherwise provided in this section, a person that violates this chapter is subject to a fine of not more than one thousand dollars. In the case of a second or subsequent violation of this chapter, the person is subject to a fine of not less than one thousand dollars nor more than five thousand dollars.
2. Any person who knowingly violates any provision of this chapter is guilty of a class C felony.
3. Any individual who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 51-30-01 in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.
4. Any person that fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty percent of the tax due but unpaid.
5. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter are forfeited to the state and must be destroyed.

51-30-08. Enforcement. The attorney general or any person who holds a permit under 26 U.S.C. 5712 may bring an action in the appropriate court in the state to prevent or restrain a violation of this chapter by any person.

SECTION 2. AMENDMENT. Section 57-36-27 of the North Dakota Century Code is amended and reenacted as follows:

57-36-27. Consumer's use tax - Cigarettes - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this state, and upon such consumers, at the following rates:
 - a. On cigarettes weighing not more than three pounds [1360.78 grams] per thousand, five mills on each such cigarette.
 - b. On cigarettes weighing more than three pounds [1360.78 grams] per thousand, five and one-half mills on each such cigarette.
2. This tax does not apply if the tax imposed by section 57-36-06 has been paid.
3. ~~This tax does not apply to the use or storage of cigarettes in quantities of two hundred or less in the possession of any one consumer nor to cigarettes exempt pursuant to section 57-36-24.~~
4. On or before the tenth day of each calendar quarter, every consumer who during the preceding calendar quarter has acquired title or possession of cigarettes for use or storage in this state, upon which cigarettes the tax imposed by section 57-36-06 has not been paid, shall file a return with the tax commissioner showing the quantity of cigarettes so acquired. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
- ~~5.~~ 4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
- ~~6.~~ 5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner has the authority to make an assessment of tax against the consumer according to the commissioner's best judgment and information.
- ~~7.~~ 6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes are applicable to consumers under this section in like manner as though set out in full herein.

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

Approved April 25, 2005

Filed April 26, 2005

SOCIAL SECURITY

CHAPTER 450

HOUSE BILL NO. 1083

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

ALIEN EMPLOYEE UNEMPLOYMENT TAX EXEMPTION

AN ACT to amend and reenact subdivision m of subsection 17 and subdivision a of subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to unemployment insurance taxation exemption for wages paid to an alien employee pursuant to federal law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²³ **SECTION 1. AMENDMENT.** Subdivision m of subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- m. Service performed ~~after December 31, 1977,~~ by an individual in agricultural labor as defined in subdivision a of subsection 18 when:

- (1) Such service is performed for a person who:
 - (a) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed ~~before January 1, 1980,~~ by an alien referred to in paragraph 2); or
 - (b) For some portion of a day in each of twenty different calendar weeks, whether ~~or not~~ such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed ~~before January 1, 1980,~~ by an alien referred to in paragraph 2) ten or more individuals, regardless of whether they were employed at the same moment of time.

²²³ Section 52-01-01 was also amended by section 2 of House Bill No. 1083, chapter 450, and section 1 of Senate Bill No. 2172, chapter 451.

- (2) Such service is not performed in agricultural labor if performed ~~before January 4, 1980,~~ by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and ~~401(a)(15)(H)~~ 101(a)(15)(H)(ii)(A) of the Immigration and Nationality Act [Pub. L. 82-414; 66 Stat. 166; 8 U.S.C. 1101 ~~et seq.~~ (a)(15)(H)(ii)(A)].
- (3) For the purposes of this subdivision, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
- (a) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 [Pub. L. 88-582; 78 Stat. 920; 7 U.S.C. 2041 et seq.]; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
 - (b) If such individual is not an employee of such other person within the meaning of subdivision a.
- (4) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph 3:
- (a) Such other person and not the crew leader must be treated as the employer of such individual; and
 - (b) Such other person must be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on the crew leader's own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.
- (5) For the purposes of this subdivision, the term "crew leader" means an individual who:
- (a) Furnishes individuals to perform service in agricultural labor for any other person;
 - (b) Pays (either on the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and
 - (c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

²²⁴ **SECTION 2. AMENDMENT.** Subdivision a of subsection 18 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. Service performed by an individual in agricultural labor, ~~except as provided in subdivision m of subsection 17.~~ For purposes of this subdivision, the term "agricultural labor" means:
 - (1) Any service performed prior to January 1, 1972, which was agricultural labor as defined in this subdivision prior to such date; and
 - (2) Remunerated service performed after December 31, 1971, in agricultural labor as defined in section 3306(k) of the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.].

Approved March 7, 2005
Filed March 8, 2005

²²⁴ Section 52-01-01 was also amended by section 1 of House Bill No. 1083, chapter 450, and section 1 of Senate Bill No. 2172, chapter 451.

CHAPTER 451**SENATE BILL NO. 2172**

(Senator Wardner)
(Representative N. Johnson)

**AMERICORPS EXEMPTION FOR UNEMPLOYMENT
INSURANCE**

AN ACT to create and enact a new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to exempting service in Americorps as covered employment for unemployment insurance purposes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁵ **SECTION 1.** A new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

Service performed as a participant in an Americorps program authorized and funded by the National and Community Service Act of 1990 [Pub. L. 101-610; 42 U.S.C. 12501 et seq.].

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

Approved March 16, 2005
Filed March 17, 2005

²²⁵ Section 52-01-01 was also amended by section 1 of House Bill No. 1083, chapter 450, and section 2 of House Bill No. 1083, chapter 450.

CHAPTER 452

SENATE BILL NO. 2106

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB SERVICE INFORMATION EXCHANGE

AN ACT to amend and reenact subsection 3 of section 52-01-03 of the North Dakota Century Code, relating to exchange of information between job service North Dakota and other state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The bureau Job service North Dakota may provide workforce safety and insurance, the labor commissioner, the driver's license division of the department of transportation, the department of human services, the department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law unemployment insurance program, and may enter into interagency agreements with those entities for the exchange of information that will enhance the administration of the unemployment insurance program. Any information so provided may be used only for the purpose of administering the duties of workforce safety and insurance, the labor commissioner, the state department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee furnished pursuant to this subsection or pursuant to interagency agreements authorized by this subsection is to be used for governmental purposes only.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 453**SENATE BILL NO. 2107**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT LAWS PUBLICATION REPEAL

AN ACT to repeal section 52-02-05 of the North Dakota Century Code, relating to publication of unemployment insurance laws and rules by job service North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 52-02-05 of the North Dakota Century Code is repealed.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 454

HOUSE BILL NO. 1028

(Legislative Council)
(Commerce Committee)

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

AN ACT to amend and reenact section 52-02-07 of the North Dakota Century Code, relating to the establishment of an unemployment insurance advisory council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-07 of the North Dakota Century Code is amended and reenacted as follows:

52-02-07. State and local unemployment insurance advisory councils appointed by bureau council - Composition - Duties - Compensation.

1. The bureau governor shall appoint a state an unemployment insurance advisory council and may appoint local advisory councils, composed in each case 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 of such members representing the general public as the bureau may designate. Such councils shall aid the bureau in formulating policies, and discussing problems related to the administration of the bureau and in assuring impartiality and freedom from political influence in the solution of such problems consisting of eight members:
 - a. Five members must represent employers, two of whom must represent employers employing fewer than twenty-five employees, one of whom must represent employers employing twenty-five or more employees, one of whom must represent an employer from the positive employer rate groups, and one of whom must represent an employer from the negative employer rate groups. Each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
 - b. Two members must represent employees, one of whom must represent organized labor and one of whom does not hold a managerial position in employment.
 - c. One at-large member who must be a resident of the state.
2. Of the members first appointed, the term of office of three members is three years, the term of office of three members is two years, and the term of office of two members is one year. Thereafter, the term of office of each member is three years. The governor shall fill any vacancy on the council by appointing a member to complete the unexpired term.
3. The council shall select a chairman annually from its members.

4. The unemployment insurance advisory council shall advise job service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program, and on any related issue or concern brought to the council's attention by the executive director or the executive director's designee. The council shall meet at least once each calendar year and may meet at the call of the chairman or at the call of the executive director.
5. The ~~state~~ members of the unemployment insurance advisory council must be reimbursed for any necessary expenses ~~but shall serve without further~~ and are entitled to receive compensation ~~except such as may be authorized and fixed by the bureau by regulation.~~ Local advisory councils may be reimbursed for any necessary expenses but must serve ~~without further compensation~~ in the sum of one hundred dollars per day spent in attendance at meetings.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 455

SENATE BILL NO. 2085

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB SERVICE PERFORMANCE AUDITS

AN ACT to amend and reenact section 52-02-18 of the North Dakota Century Code, relating to performance audits of job service North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-18 of the North Dakota Century Code is amended and reenacted as follows:

52-02-18. Independent performance audit - Continuing appropriation.

The state auditor shall, upon request of the legislative audit and fiscal review committee, cause a performance audit of job service North Dakota to be conducted within twelve months after receipt of the request. The state auditor may appoint ~~on a biennial basis~~ an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit or the state auditor may conduct the performance audit. If the state auditor completes the audit, the state auditor may contract with a consulting firm to aid in the state audit or to complete the audit and shall charge job service North Dakota for the audit, including the services of the consulting firm. ~~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.~~

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 456**HOUSE BILL NO. 1195**

(Representative Keiser)

EMPLOYER RESTRUCTURING, HISTORY, AND TRANSFERS

AN ACT to create and enact two new sections to chapter 52-04 and sections 52-04-08.1 and 52-04-08.2 of the North Dakota Century Code, relating to definitions, payment of unemployment insurance by staffing services, employer restructuring activities, and transfers of unemployment insurance tax account reserve history; to amend and reenact subsection 4 of section 52-04-06 and section 52-04-08 of the North Dakota Century Code, relating to voluntary contributions to lower unemployment insurance tax rates, transfer of unemployment insurance employer experience history to successor entities, and the transfer of workforce to other entities; to provide for a legislative council study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agency" or "bureau" means job service North Dakota.
2. "Client company" means a person that contracts to receive services, within the course of that person's usual business, from a staffing service or that contracts to lease any or all of that person's employees from a staffing service.
3. "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
4. "Staffing service" means an employer in the business of providing the employer's employees to a client company to perform services within the course of that client company's usual business. The term includes a professional employer organization, a staff leasing company, an employee leasing organization, and a temporary staffing company. The term "staffing service" must be broadly construed to encompass an entity that offers services provided by a professional employer organization, a staff leasing company, an employee leasing organization, or a temporary staffing company, regardless of the term used.
5. "Temporary staffing" or "temporary staffing service" means an arrangement through which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation, including an employee's temporary absence; a temporary skill shortage; a seasonal workload; or a special assignment or project with a targeted end date.

The term does not include an arrangement through which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.

6. "Unemployment insurance tax rate" means the rate calculated or assigned under sections 52-04-05 and 52-04-06.
7. "Violates or attempts to violate" includes intent to evade, misrepresentation, and willful nondisclosure.
8. "Workforce" means some or all of the employees of a transferring employer.

SECTION 2. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

Staffing services - Payment of unemployment insurance taxes.

1. If a staffing service exclusively provides temporary staffing services, the staffing service is considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. If a staffing service provides temporary and long-term employee staffing services, the staffing service is subject to the reporting and tax requirements associated with the type of employee provided to the client company.
2. For the purposes of long-term employee staffing services provided by a staffing service, the staffing service shall:
 - a. Report quarterly the wages of all employees furnished to each client company and pay taxes on those wages at the client company's unemployment insurance tax rate; except as otherwise provided under subsection 3.
 - b. Maintain complete and separate records of the wages paid to employees furnished to each of the client companies. Claims for benefits must be separately identified by the staffing service for each client company.
 - c. Notify the agency of each client company's name and unemployment insurance account number and the date the staffing service began providing services to the client company. The staffing service shall provide the agency with the information required under this subdivision upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
 - d. Supply the agency with a copy of the agreement between the staffing service and the client company.
 - e. Notify the agency upon termination of any agreement with a client company, but no later than fifteen days from the effective date of the termination.

f. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between the staffing service and a client company is terminated, the employees become the sole employees of the client company.

3. For the purposes of long-term employee staffing services provided by a staffing service, upon authorization of the agency, the staffing service may be considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. The agency may not make an authorization under this subsection unless one of the following requirements is met:

a. In the case of a client company unemployment insurance tax rate that is higher than the staffing services tax rate:

(1) The staffing service:

(a) Calculates the difference between the staffing service's tax rate and the client company's tax rate;

(b) Applies the difference to the wages to be earned by the employees furnished to the client company in the following completed calendar quarter; and

(c) Notifies the agency that such application would, if the staffing service's tax rate were applied to those same wages, cause a reduction in the tax due on those wages which does not exceed five hundred dollars.

(2) If the reduction under paragraph 1 exceeds five hundred dollars, at the written request of the staffing service, the agency may make a written determination that it is appropriate to allow the staffing service to use the staffing service's unemployment insurance tax rate.

b. The staffing service includes in its contract with the client company a requirement that if the client company's unemployment insurance tax rate is higher than the staffing service's tax rate, the client will arrange to make payment to the agency, pursuant to subsection 4 of section 52-04-06, in the amount necessary to cause the client company's unemployment insurance tax rate should it be recomputed to be determined by the agency to be equivalent to the staffing service's unemployment insurance tax rate. Before the agency makes an authorization under this subdivision, the agency actually must receive payment of the amount required to cause the determination that the client company has complied with this subdivision.

c. The staffing service demonstrates to the agency that the staffing service has entered an agreement with a client company that has an unemployment insurance tax rate that is, at the time of execution of the contract, equal to or lower than the staffing service's tax rate.

4. If a staffing service enters a contract with a client company that has an unemployment insurance tax rate that is lower than the staffing service's tax rate, the agency shall determine the following year's tax rate for the staffing service by calculating a blended reserve ratio using the proportion of that client company's total wages paid for up to the previous six years to the total wages paid for up to the previous six years for all of that staffing service's client companies whose furnished workers are considered the staffing service's employees for unemployment insurance tax purposes pursuant to subsection 3.
5. Both a staffing service and client company are considered employers for the purposes of this title. Both parties to a contract between a staffing service and a client company are jointly liable for delinquent unemployment insurance taxes, and the agency may seek to collect such delinquent taxes, and any penalties and interest due, from either party. This chapter does not modify or impair any other provisions of the contract between the staffing service and the client company not relating to the requirements of this subsection concerning liability for payment of taxes on the wages paid to workers furnished by the staffing service to the client company, and the means of determining the tax rate to be applied to those wages.
6. The agency shall determine whether a person is a staffing service. If the agency determines a person is a staffing service, the agency may further determine if the person is a temporary staffing service. The agency's determination must be issued in writing, and within fifteen days of the date of issuance of that determination, a person aggrieved by that determination may appeal that determination. The appeal must be heard in the same manner and with the same possible results as all other administrative appeals under this title. In making a determination under this subsection, the agency may consider:

 - a. The number of client companies with which the staffing service has contracts;
 - b. The length of time the staffing service has been in existence;
 - c. The extent to which the staffing service extends services to the general public;
 - d. The degree to which the client company and the staffing services are separate and unrelated business entities;
 - e. The repetition of officers and managers between the client company and staffing service;
 - f. The scope of services provided by the staffing service;
 - g. The relationship between the staffing service and the client company's workers;
 - h. The written agreement between the staffing service and the client company; and
 - i. Any other factor determined relevant by the agency.

7. The agency may require information from any staffing service, including a list of current client company accounts, staffing assignments, and wage information. A client company shall provide any information requested by the agency regarding any staffing service.

SECTION 3. AMENDMENT. Subsection 4 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

4. a. After each year's rate schedule has been established, an employer may pay into the fund, or cause to be paid into the fund on the employer's behalf, an amount in excess of the contributions required to be paid under this section. That amount must be credited to the employer's separate account. The employer's rate must be recomputed with the amount paid pursuant to this subsection included in the calculation only, except as allowed by subdivision b, if that amount was paid by April thirtieth of that year. Payments may not be refunded or used as credit in the payment of contributions.
- b. An employer that enters a contract with a staffing service, other than a temporary staffing service, may make the payments authorized by this subsection at any time during the rate year and the agency will determine if that payment is adequate to allow the staffing service to comply with subsection 3 of section 2 of this Act; however, the employer's tax rate will remain in effect for the remainder of the tax year. The agency will deposit any payment received pursuant to this subsection immediately and will credit it to the employer's separate account, but the agency will apply the payment to the calculation of the employer's tax rate for the following rate year. In order to take advantage of this subdivision and subsection 3 of section 2 of this Act, an employer may not be delinquent in its unemployment insurance tax payments on the date on which the payment authorized by this subdivision is made.

SECTION 4. AMENDMENT. Section 52-04-08 of the North Dakota Century Code is amended and reenacted as follows:

52-04-08. Succession to predecessor's experience record - Impact of substantial common ownership, management, or control.

1. An employing unit that in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer and continues essentially the same business activity of the whole or part transferred, ~~must~~ may upon request be transferred in accordance with such regulations as the bureau may prescribe law and any relevant rules adopted by the agency, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding predecessor employer, unless the agency finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. ~~Provided that if~~ If the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made.
2. When an employing unit in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer,

~~the bureau the agency shall transfer all or the appropriate part of the experience record, reserve balance, whether positive or negative, and benefit experience of such predecessor to the successor if it finds that (a) the predecessor was owned or controlled by or owned or controlled the successor directly or indirectly, by legally enforceable means or otherwise or (b) both the predecessor and successor were owned or controlled either directly or indirectly, by legally enforceable means or otherwise, by the same interests there was, at the time of acquisition, substantially common ownership, management, or control of the predecessor and the successor.~~

3. When a part of an employer's experience record reserve account and benefit experience is ~~to be~~ transferred under this section, the portion of the experience record and reserve account transferred must be in the same ratio to the total experience record and reserve account as the average annual payroll of the transferred organization, trade, business, workforce, or assets is to the total average annual payroll of the predecessor.
4. An employing unit's experience record may not be transferred in an amount that results in the successor and predecessor portions totaling more than one hundred percent of the predecessor's history.

SECTION 5. Section 52-04-08.1 of the North Dakota Century Code is created and enacted as follows:

52-04-08.1. Implementation of federal anti-SUTA dumping legislation.

The agency shall implement section 52-04-08.2 to ensure necessary compliance with section 303(k) of the Social Security Act [Pub. L. 108-195; 42 U.S.C. 503]. The agency shall adopt rules and procedures necessary to ensure compliance with that section. The agency may issue necessary subpoenas, in accordance with sections 52-06-23 and 52-06-25, to carry out its responsibilities under this chapter.

SECTION 6. Section 52-04-08.2 of the North Dakota Century Code is created and enacted as follows:

52-04-08.2. Transfers of unemployment insurance experience - Recalculation of rates - Definitions - Civil and criminal penalties.

Notwithstanding any other provision of law, the following applies regarding assignment of penalty tax rates and transfers and acquisitions of businesses:

1. a. If an employer transfers all or a part of its trade or business to another employer and at the time of the transfer there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the transferred trade or business is transferred to the employer to which the business is transferred. The rates of both employers must be recalculated and made effective on the first day of the quarter in which the transfer took effect. The transfer of any of the employer's workforce to another employer is considered a transfer of trade or business under this subsection if, as a result of the transfer, the transferring employer no longer performs the trade or business in which the transferred workforce was engaged, and the trade or business is performed by the employer to which the workforce was transferred.

- b. If, following a transfer of experience under subdivision a, the agency determines that a substantial purpose of the transfer of trade or business was to obtain a reduced unemployment insurance tax rate, the experience ratings of the employers involved must be combined into a single account and a single unemployment insurance tax rate must be assigned to that account.
- 2. If a person, who at the time of acquisition is not an employer under this title, acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the agency finds that the person acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. Instead, the person must be assigned the applicable new employer rate calculated under section 52-04-05. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate, the agency shall use objective factors that may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted before acquisition.
- 3. If a person knowingly acts or attempts to transfer or acquire a trade or business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate or knowingly violates any other provision of this chapter related to determining the assignment of an unemployment insurance tax rate, or if a person knowingly advises another person in a way that results in a violation of those provisions, the person is subject to the civil penalties provided in this subsection.
 - a. If the person is an employer, the employer must be assigned, in lieu of that employer's experience rate, the highest rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and the three rate years immediately following that rate year. However, if the employer's experience rate is already at the highest rate for any year of that four-year period or if the amount of increase in the person's experience rate imposed under this subdivision would be less than two percent for any year of the four-year period, the penalty unemployment insurance tax rate for the year must be determined by adding a rate increment of two percent of taxable wages to the calculated experience rate.
 - b. If the person is not an employer, the person is subject to a civil penalty of not more than twenty-five thousand dollars. Any civil penalty collected must be deposited in the penalty and interest account established under section 52-04-22.
- 4. In addition to the civil penalty imposed under subsection 3, any person that knowingly violates this section or knowingly attempts to violate this section is guilty of a class C felony.

SECTION 7. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL EMPLOYER ORGANIZATIONS. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state. The study must include consideration of how other states address the issue of registration of professional employer organizations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 457

HOUSE BILL NO. 1027

(Legislative Council)
(Commerce Committee)

UNEMPLOYMENT COMPENSATION TAX RATES

AN ACT to amend and reenact section 52-04-05 of the North Dakota Century Code, relating to the determination of unemployment insurance tax rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

52-04-05. Determination of rates.

1. As used in this section:

- a. "Income needed to pay benefits" means the estimate of benefits payable in a given calendar year less the estimate of interest to be earned by the unemployment insurance trust fund for that calendar year.
- b. "Solvency balance" means the income needed, whether a positive or negative figure, in a given rate year to reach the solvency target over the number of years remaining of the period within which the solvency target is to be reached plus the estimate of the amount of income needed to pay benefits.
- c. "Trust fund reserve" excludes all Reed Act [42 U.S.C. 1103] cash.

2. For each calendar year, the bureau separately shall estimate the amount of income needed to pay benefits and ~~maintain a~~ shall estimate the amount of income needed to reach a solvency balance in the unemployment compensation insurance trust 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. On January 1, 2000, the required amount of the trust fund reserve becomes a targeted moves toward the solvency target amount as determined under this subsection. The solvency target is an average high-cost multiple of one. The average high-cost multiple is the number of years the bureau could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the

total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309].

3. The initial trust fund reserve solvency target ~~will~~ must be achieved over a seven-year period from January 1, 2000. After the solvency target required by this section is reached, the calculation of the solvency target must be continued and, if the trust fund reserve as of December thirty-first of any year is less or greater than the solvency target, the rates must be adjusted so that one-fifth of the difference between the solvency target and the current trust fund reserve is estimated to be collected in the following rate year.

4. Progress toward achieving the targeted amount of the trust fund reserve solvency target is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the trust fund reserve solvency target to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve. The executive director may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. ~~When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached. If while achieving the trust fund reserve target the trigger of above three percent insured unemployment rate and an increase of more than one hundred ten percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase toward achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.~~

2- 5. Rates must be determined as follows:

- a. The income ~~required~~ needed to pay benefits 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 needed to pay benefits.
- b. If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer

maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus five and one-tenth percent necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer maximum rate as described in this subsection plus five and one-tenth percent.

- c. The positive employer maximum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.
- d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as

required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

- ~~3.~~ 6. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum 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. 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. ~~During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. However, this rate limitation provision for calendar years 2000, 2001, and 2002 does not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that has failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.~~
- 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 that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges 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 the negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.
4. 7. 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 providing that the employer's experience record has not been transferred in accordance with section 52-04-08. ~~Such~~ The employer's rate, however, must be determined in accordance with subsection ~~3~~ 6.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 458

SENATE BILL NO. 2108

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFITS AND STUDENT DISQUALIFICATION

AN ACT to amend and reenact subsection 2 of section 52-04-07 and subsections 1 and 6 of section 52-06-02 of the North Dakota Century Code, relating to charging of certain benefit payments to reimbursing employers' accounts, charging of benefits to base-period employers, and to the definition of a full-time student who would be disqualified from receiving benefits under the unemployment compensation insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding subsection 1, an employer's account may not be charged for any of the following:
 - a. With benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143; 42 U.S.C. 5122(2)], if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.
 - b. With benefits paid to an individual who; ~~during the base period;~~ either:
 - (1) Left the employment of a the base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; or
 - (2) Who was discharged from employment by the base-period employer for misconduct.
 - c. As provided under section 52-06-29.
 - d. With benefits paid to an individual who is in training with the approval of ~~the bureau~~ job service North Dakota.
 - e. With benefits paid to an individual who is subsequently determined not entitled to receive the benefits.
 - f. With benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual

commenced work for that employer. This subdivision does not apply to an employee of a temporary help firm.

²²⁶ **SECTION 2. AMENDMENT.** Subsections 1 and 6 of section 52-06-02 of the North Dakota Century Code are amended and reenacted as follows:

1. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - a. Can demonstrate that the individual has earned remuneration for personal services in employment equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if ~~the bureau~~ job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer,

²²⁶ Section 52-06-02 was also amended by section 1 of House Bill No. 1202, chapter 460.

from whom the individual became separated as a result of the illness or injury. ~~The bureau~~ Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

6. For any week of unemployment if such individual is a student registered for ~~full attendance~~ a full-time curriculum at, and is regularly attending, an established school, college, or university, ~~except as provided in subdivision a of~~ and the scheduled class hours are the same time period or periods as the normal work hours of the occupation from which that individual earned the majority of the wages in that individual's base period, unless that individual is authorized to receive benefits while in training pursuant to subsection 3 of section 52-06-01. However, this disqualification does not apply to ~~full-time postsecondary~~ students registered for a full-time curriculum who have earned the majority of ~~their wage credits~~ the wages in their base period periods for services performed during weeks in which the individual was so registered and

attending school as a full-time postsecondary student. As used in this subsection, the term "full-time curriculum" means a course load of twelve or more credit hours or a course load found to be equivalent by rule adopted by job service North Dakota.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 459

HOUSE BILL NO. 1082

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT TAX RATE APPEALS, HEARINGS, AND STATUS

AN ACT to amend and reenact section 52-04-10, subsection 3 of section 52-04-11.1, and section 52-04-17 of the North Dakota Century Code, relating to appeals from employer tax rate notices, administrative hearings concerning corporate officer personal liability, and questions of employer status for unemployment compensation insurance purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-10 of the North Dakota Century Code is amended and reenacted as follows:

52-04-10. Contributions for ensuing year - Notification - Review. The bureau shall promptly make a determination and notify each employer of the employer's rate of contributions as determined for each ensuing year by the end of the first full week of December, but not later than December tenth, of the preceding year. ~~Such~~ The rate of contributions must be computed pursuant to the provisions of this chapter. ~~Such~~ The determination becomes conclusive and binding upon the employer unless, within fifteen calendar days after the mailing of the notice thereof to the employer's last-known address, or in the absence of the mailing, within fifteen calendar days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reasons therefor. If the bureau grants such review, the employer must be notified promptly thereof and must be granted an opportunity for a hearing, but a written appeal of the determination. However, no employer shall have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to the provisions of chapter 52-06, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute the services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination, or decision or to any other administrative proceeding under this chapter in which the character of these services was determined. For purposes of this section, an employer was not a party to the determination any such proceeding if notice of the determination, redetermination, or decision and the employer's right to appeal the determination, redetermination, or decision was not mailed or personally delivered to the employer. The employer must be notified promptly of the bureau's denial of the employer's application, or of the bureau's redetermination, both of which become final unless within thirty days after the mailing of notice thereof to the employer's last-known address or in the absence of mailing, within thirty days after delivery of such notice, a petition for judicial review is filed in the district court of Burleigh County. Any proceeding before the court under the terms of this section must be had in accordance with the provisions in chapter 52-06 with respect to court review.

SECTION 2. AMENDMENT. Subsection 3 of section 52-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~After notice and opportunity for a hearing, the~~ The unemployment compensation insurance division shall make a written determination as to the personal liability of a corporate officer or employee under this section. ~~A hearing must be requested within twelve days from the date of mailing of the notice.~~ The determination is final unless the person found to be personally liable ~~requests review by the bureau~~ files a written appeal of the determination within fifteen calendar days after mailing of the notice of determination to the person's last-known address.

SECTION 3. AMENDMENT. Section 52-04-17 of the North Dakota Century Code is amended and reenacted as follows:

52-04-17. Administrative determinations of coverage. ~~The job unemployment insurance division may, upon its own motion or upon application of an employing unit, and after notice and opportunity for hearing, make findings of fact and on the basis thereof, determinations may make a written determination with respect to whether an employing unit constitutes an employer and, or whether services performed for or in connection with the business of an employing unit constitute employment, or both such determinations. Appeal from any such determination may be taken to the bureau within fifteen days after the mailing of notice of the findings and determination to the employing unit; or, in the absence of mailing, within fifteen days after the delivery of the notice. Proceedings in such appeals must be in the same manner as in appeals from a decision of an appeal tribunal. A determination of the division, in the absence of appeal therefrom, and a determination of the bureau upon an appeal, together with the record of the proceeding under this section are admissible in any subsequent proceeding under the North Dakota Unemployment Compensation Law, and if supported by substantial evidence and in the absence of fraud are conclusive, except as to errors of law, upon any employing unit which was a party to the proceeding under this section. A determination made pursuant to this section is final unless the employing unit, within fifteen calendar days of the date of mailing of the determination, files a written appeal with job service North Dakota.~~

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 460

HOUSE BILL NO. 1202

(Representatives Keiser, Delzer, Nicholas)
(Senators Flakoll, Warner)

UNEMPLOYMENT COMPENSATION BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsection 15 of section 52-06-02 of the North Dakota Century Code, relating to when individuals are disqualified for unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁷ **SECTION 1. AMENDMENT.** Subsection 15 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

15. For any week with respect to which an individual is receiving a pension, ~~which shall include including a governmental or pension other than federal social security retirement benefits, and any other pension, retirement or pay, retired pay, annuity, or and any other similar periodic payment; under a plan maintained or contributed to by a base-period or chargeable employer; as determined under applicable law, unless the weekly benefit amount payable to such individual for such week shall be is reduced, but not below zero:~~
 - a. By the prorated weekly amount of the pension after deduction of three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 4 June 30, 1985,~~ and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 4 June 30, 1986;~~
 - b. By the entire prorated weekly amount of the pension if subdivision a or c does not apply; or
 - c. By one-fourth of the pension if the entire contributions to the plan were provided by such individual, ~~or by the individual and an employer, or by any other person or organization, who that is not a base-period or chargeable employer; as determined under applicable law, for claims filed on or after July 4 June 30, 1985,~~ and by no part of the pension if the entire contributions to the plan were provided by such individual, ~~or by the individual and an employer, or by any other person or organization, who that is not a~~

²²⁷ Section 52-06-02 was also amended by section 2 of Senate Bill No. 2108, chapter 458.

base-period or chargeable employer; as determined under applicable law, for claims filed ~~on or~~ after ~~July 4~~ June 30, 1986.

~~No~~ A reduction may not be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period, or remuneration received for such services, for the employer did not affect the individual's eligibility for, or increase the amount of, the pension, retirement pay, ~~or~~ retired pay, annuity, or similar payment. This limitation does not apply to pensions paid under the ~~Social Security Act or the~~ Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under ~~those Acts~~ the Railroad Retirement Act of 1974 must be treated solely in the manner specified by subdivisions a, b, and c. A reduction may not be made under this subsection by reason of receipt of federal social security retirement benefits.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 461

SENATE BILL NO. 2086

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB SERVICE FEES

AN ACT to amend and reenact section 52-08-13 of the North Dakota Century Code, relating to charging of fees for services; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-08-13 of the North Dakota Century Code is amended and reenacted as follows:

52-08-13. Job task analysis services - Testing services - Job fair services - Personal reemployment account services - Authorization to charge fees - Continuing appropriation. Job service North Dakota may provide job task analysis services, testing services, and job fair services to an employer requesting these services and may provide personal reemployment account services to an individual requesting those services. Notwithstanding the reference to free public employment offices in this chapter or in any other provision of law, job service North Dakota may charge reasonable fees ~~to employers~~ for providing job task analysis services, testing services, job fair services, and personal reemployment account services. All fees collected under this section must be deposited in a separate interest-bearing account at the Bank of North Dakota and must be used for the purpose of providing job task analysis services, testing services, job fair services, and personal reemployment account services. Moneys in this fund are appropriated on a continuing basis for the purpose of providing job task analysis services, testing services, job fair services, and personal reemployment account services.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 462

HOUSE BILL NO. 1059

(Representatives R. Kelsch, Porter, Carlisle)
(Senators Cook, Wardner, Grindberg)

WORKFORCE 20/20 ELIGIBILITY

AN ACT to amend and reenact sections 52-08.1-01, 52-08.1-02, 52-08.1-03, 52-08.1-04, 52-08.1-05, and 52-08.1-06 of the North Dakota Century Code, relating to changing the name of work force 2000 to workforce 20/20 and eligibility for workforce 20/20 funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-01. North Dakota ~~work force 2000~~ workforce 20/20 policy and goals.

1. The legislative assembly finds that a highly skilled work force is critical to the present and future competitiveness of North Dakota's economy. The legislative assembly, therefore, declares that it is the policy of the state to support and promote skill training, retraining, and upgrade training for North Dakota workers. It is the goal of the state to:
 - a. Improve the skills of North Dakota workers;
 - b. Promote and sponsor effective and responsive training programs for employed and unemployed North Dakotans who need job-related training;
 - c. Promote programs that lead to family wage jobs;
 - d. Secure the active participation and full cooperation of North Dakota industry leaders, business owners, and employee representatives in developing programs to increase and improve worker skill training;
 - e. Promote the coordination of North Dakota's education and job training systems to more fully respond to the increasingly complex training needs of workers; and
 - f. Promote access to education and job training programs for all North Dakotans regardless of their economic status or geographic location within the state.
2. The legislative assembly declares that it is the policy of this state to integrate skill training and development programs into its economic development strategies.

SECTION 2. AMENDMENT. Section 52-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-02. North Dakota work force 2000 workforce 20/20 program administration. Job service North Dakota shall administer the North Dakota ~~work force 2000~~ workforce 20/20 program within the state.

1. Program priorities Job service North Dakota shall give priority to applicants that:
 - a. Are compatible with statewide economic development strategies.
 - b. Demonstrate business and community financial support and participation.
 - c. Coordinate activities and resources with other training programs.
 - d. Provide for followup and evaluation of program results.
 - e. Provide customized training, retraining, and upgrade training in occupations that pay not less than two hundred percent of the federal and state minimum wage.
 - f. Provide training to unemployed and employed residents of North Dakota for new businesses creating new jobs and expanding businesses.
2. Program requirements:
 - a. ~~Only~~ Funding through the program is limited to training for permanent jobs or occupations which that have significant career opportunities and which require substantive instructions will be considered for funding resulting from:
 - a. Introduction of new technologies or new equipment; or
 - b. Significant changes in business operations or production methods.
- ~~b.~~ 3. An applicant may be eligible for funding of sales and marketing training that is necessitated due to technology or equipment changes that affect manufacturing or production.
4. ~~Training can include only~~ funded through the program is limited to upgrade training or retraining of current workers in situations where in which training is required for continued employment or and to training of trainees as long as if the company gives successful graduates hiring priority.
 - e. ~~Only trainees approved by participating parties will be~~ are eligible for training funded through the program.
- ~~d.~~ 5. Training will be funded through the program is limited to state residents.
- ~~e.~~ 6. All direct training costs are allowable and can for funding through the program. Direct training costs may include the following:
 - (1) a. Program promotion.
 - (2) b. Instructor wages, per diem, and travel.

- (3) c. Curriculum development and training materials.
- (4) d. Lease of training equipment and training space.
- (5) e. Miscellaneous direct training costs.
- (6) f. Administrative costs.
- (7) g. Assessment and testing.

SECTION 3. AMENDMENT. Section 52-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-03. North Dakota ~~work force 2000~~ workforce 20/20 priority of industry requirements.

1. ~~Assist~~ The program is designed to assist companies that are undergoing major technological changes and where training is deemed critical to the company and in occupations that are deemed to have inadequate trained personnel.
2. ~~Training~~ Job service North Dakota shall encourage training assistance must be encouraged for small companies and companies located in rural areas.
3. ~~Companies must be encouraged~~ Job service North Dakota shall encourage companies to participate with in-kind contributions of training space, training equipment, training supplies, and technical assistance.
4. ~~Training programs must be designed with~~ require the direct participation of the sponsoring company and an employee representative.
5. If new job openings are created through upgrade training, the sponsoring company should give priority consideration to individuals eligible for other state and federal job training programs.
6. Job service North Dakota shall encourage training assistance for a company that manufactures or otherwise produces a product. However, the class of occupations eligible to receive training through such a company is not limited to manufacturing or production.

SECTION 4. AMENDMENT. Section 52-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-04. North Dakota ~~work force 2000~~ workforce 20/20 program implementation and coordination.

1. All programs must be conducted through contractual arrangements made with job service North Dakota.
2. Programs must be conducted in cooperation with appropriate state board for career and technical education approved training providers and institutions.
3. Final screening of trainees must be conducted by the company with the assistance of job service North Dakota when required.

4. Program effectiveness will be determined by post-training monitoring that will address such issues as:
 - a. Company satisfaction with the program.
 - b. Company transition to new technologies or products.
 - c. Post-training wage levels versus pretraining wage levels.
 - d. Number of trainees successfully completing the program.
 - e. Number of trainees who are retained by the company as a result of the training program.
 - f. Number of new jobs created at entry level as a result of upgrade training.

SECTION 5. AMENDMENT. Section 52-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-05. North Dakota ~~work force 2000~~ workforce 20/20 application procedure.

1. A proposal or concept paper must be submitted by the appropriate company, trade representative, or employee representative to job service North Dakota.
2. The proposal or concept paper should address the key guideline points but be kept brief.

SECTION 6. AMENDMENT. Section 52-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

52-08.1-06. North Dakota ~~work force 2000~~ workforce 20/20 gifts and grants. Job service North Dakota is authorized to accept and use any funds, including gifts and grants, made available for the purpose of defraying expenses involved in carrying out this chapter.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 463

HOUSE BILL NO. 1073

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

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; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of 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, ~~2003~~ 2005, ~~eight~~ nine hundred ~~seventy-nine~~ thirty-three dollars and ~~ninety-six~~ twenty-eight cents; or
 - (2) Effective August 1, ~~2004~~ 2006, nine hundred ~~six~~ fifty-nine dollars and ~~sixty-two~~ ninety-four cents.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$19,000, or so much of the sum as may be necessary, to the public employees retirement system for transfer to the old-age and survivors' insurance trust fund for the purpose of paying old-age and survivor insurance benefits to remaining beneficiaries, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved March 23, 2005
Filed March 23, 2005

SPORTS AND AMUSEMENTS

CHAPTER 464

SENATE BILL NO. 2356

(Senators Flakoll, J. Lee)

(Representatives Koppelman, Wieland)

MIXED FIGHTING STYLE COMPETITIONS

AN ACT to create and enact a new section to chapter 53-01 of the North Dakota Century Code, relating to mixed fighting style competitions; and to amend and reenact sections 53-01-02, 53-01-03, 53-01-07, 53-01-09, and 53-01-17 of the North Dakota Century Code, relating to the regulation of mixed fighting style competitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-01 of the North Dakota Century Code is created and enacted as follows:

Mixed fighting style competition - Definition - Prohibition. As used in this chapter, "mixed fighting style competition" means an advertised or professionally promoted exhibition or contest for which any type of admission fee is charged and in which participants who inflict or employ kicks, punches, blows, holds, and other techniques to injure, stun, choke, incapacitate, or disable an opponent. The techniques may include a combination of boxing, kickboxing, wrestling, grappling, or other recognized martial arts. Boxing and kickboxing exhibitions or contests without the combination of other techniques do not constitute mixed fighting style competitions. A person may not advertise, promote, sponsor, hold, or participate in any mixed fighting style competition in this state until a mixed fighting style advisory board is authorized and appointed and rules governing the competitions have been adopted by the secretary of state under this chapter.

SECTION 2. AMENDMENT. Section 53-01-02 of the North Dakota Century Code is amended and reenacted as follows:

53-01-02. Administration by secretary of state - Appointment of athletic advisory board and mixed fighting style advisory board. The secretary of state shall act as state athletic commissioner and administer this chapter. The secretary of state may appoint an athletic advisory board to assist and advise the secretary of state in matters relating to the regulation of boxing, kickboxing, and sparring. The secretary of state also may appoint a mixed fighting style advisory board whose members may include one or more members of the athletic advisory board. The secretary of state shall define the duties of the each board. Members of the board shall serve without Board members are not entitled to compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed state employees incurred in performing their official duties.

SECTION 3. AMENDMENT. Section 53-01-03 of the North Dakota Century Code is amended and reenacted as follows:

53-01-03. Restrictions. The secretary of state may not promote, directly or indirectly, ~~promote~~ any boxing, kickboxing, mixed fighting style competition, or sparring exhibition, engage in the managing of any boxer ~~or~~, kickboxer, or mixed style fighter, or be interested in any manner in the proceeds from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition.

SECTION 4. AMENDMENT. Section 53-01-07 of 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, mixed fighting style competitions, or sparring exhibitions held in the state and may:

1. Adopt rules governing the conduct of boxing, kickboxing, mixed fighting style competitions, and sparring exhibitions.
2. Establish license fees for all boxers, kickboxers, mixed style fighters, boxing ~~and~~, kickboxing, and mixed fighting style competition promoters, managers, judges, timekeepers, cornerpersons, knockdown counters, matchmakers, and referees or other participants.
3. Establish by rule a fee based on the percentage of gross revenues from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board or the mixed fighting style 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 5. AMENDMENT. Section 53-01-09 of the North Dakota Century Code is amended and reenacted as follows:

53-01-09. Fees paid into special fund - Continuing appropriation. All fees collected by the secretary of state pursuant to this chapter must be deposited in a special fund maintained in the state treasury. All money deposited in the fund is appropriated as a continuing appropriation to the secretary of state for administering this chapter and for the compensation and expenses of members of the athletic advisory board and the mixed fighting style advisory board.

SECTION 6. AMENDMENT. Section 53-01-17 of the North Dakota Century Code is amended and reenacted as follows:

53-01-17. Exhibitions also governed by local ordinance. Boxing, kickboxing, or sparring exhibitions may not be held in cities in which such contests or exhibitions are declared illegal by ordinance. All boxing, kickboxing, mixed fighting style competitions, or sparring exhibitions held in any city in this state must be held in conformity with the ordinances of the city in addition to the requirements under this chapter.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 465

SENATE BILL NO. 2384

(Senators Fischer, Trenbeath, Wardner)
(Representatives D. Johnson, Weisz)

RAFFLES AND GAMES OF CHANCE RECORDS

AN ACT to amend and reenact subsection 3 of section 53-06.1-06 and section 53-06.1-10.1 of the North Dakota Century Code, relating to raffles and games of chance accounting records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. An organization shall maintain complete, accurate, and legible bank and accounting records in North Dakota for all gaming activity and establish ~~an adequate~~ a system of internal control as prescribed by rule. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and use of net proceeds. If an organization does not renew its license or its license is denied, relinquished, or revoked and it has not disbursed all of its net proceeds, the organization shall file an action plan as prescribed by the gaming rules with the attorney general.

SECTION 2. AMENDMENT. Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10.1. Raffles. A prize for a raffle may be cash or merchandise but may not be real estate. No single cash prize may exceed one thousand dollars and the total cash prizes in one day may not exceed three thousand dollars. However, on not more than one occasion per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 466**HOUSE BILL NO. 1087**

(Judiciary Committee)

(At the request of the Attorney General)

GAMES OF CHANCE REGULATION

AN ACT to amend and reenact subsections 2, 3, and 4 of section 53-06.1-15.1 of the North Dakota Century Code, relating to regulation of games of chance operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2, 3, and 4 of section 53-06.1-15.1 of the North Dakota Century Code are amended and reenacted as follows:

2. Inspect all gaming equipment and supplies ~~on a site or premises~~.
3. Seize ~~and~~ remove ~~from a site or premises and~~, or impound any gaming equipment, supplies, games, or books and records for the purpose of examination and inspection.
4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, organizations, lessors, manufacturers, distributors, and affiliated companies ~~on their premises~~ concerning any income, expense, or use of net proceeds, and determine compliance with this chapter or gaming rules.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 467

SENATE BILL NO. 2340

(Senators Bowman, Holmberg, Lyson)
(Representatives Carlson, Devlin, R. Kelsch)

RACING COMMISSION

AN ACT to amend and reenact subsection 1 of section 53-06.2-02, subsection 3 of section 53-06.2-11, and section 53-06.2-13 of the North Dakota Century Code, relating to the North Dakota racing commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁸ **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota racing commission is established ~~in the office of the attorney general. The commission is subject to the supervision and direction of the attorney general, except with regard to the commission's authority to spend the funds described in subsection 6 of section 53-06.2-11. The attorney general may require payment for any services rendered to the racing commission. Payment for such services must be deposited into the attorney general's operating fund. The commission consists~~ consisting of the chairman and four other members appointed by the governor. ~~Of the members appointed by the governor, one~~ One of the members must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. 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. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

²²⁹ **SECTION 2. AMENDMENT.** Subsection 3 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

²²⁸ Section 53-06.2-02 was also amended by section 15 of House Bill No. 1003, chapter 3.

²²⁹ Section 53-06.2-11 was also amended by section 1 of House Bill No. 1389, chapter 469.

3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may, ~~upon approval of the attorney general~~, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

SECTION 3. AMENDMENT. Section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-13. Duty of attorney general to participate in certain hearings and to conduct investigations - Employment of private counsel by commission.

1. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this chapter. The attorney general may require payment for any services rendered to the racing commission. Payment for the services must be deposited in the attorney general's operating fund. The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.
2. The attorney general may investigate licensed service providers and affiliated companies authorized by the commission to operate the simulcast parimutuel wagering system. The commission shall reimburse the attorney general for all services rendered to the racing commission. Payment for the services must be deposited in the attorney general's operating fund.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 468

SENATE BILL NO. 2344

(Senators Heitkamp, Fischer, Grindberg)
(Representatives Hawken, Kroeber, Thoreson)

RACING COMMISSION FEE USE

AN ACT to amend and reenact subsection 6 of section 53-06.2-05 and section 53-06.2-08 of the North Dakota Century Code, relating to the use of racing commission fee collections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Adopt additional rules for the administration, implementation, and regulation of activities conducted pursuant to this chapter. The commission shall deposit any fees collected under authority of this subsection in the racing commission operating fund. Subject to legislative appropriation, the commission may spend the fees for operating costs of the commission.

SECTION 2. AMENDMENT. Section 53-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-08. License authorization and fees.

1. Each license issued under the certificate system must describe the place, track, or racecourse at which the licensee may hold races. Every license must specify the number of days the licensed races may continue, the hours during which racing may be conducted, and the number of races that may be held each day. Races authorized under this chapter may be held during the hours approved by the commission and within the hours permitted by state law.
2. The commission may charge a license fee for racing commensurate with the size and attendance of the race meet. ~~The commission shall remit license fees to the state treasurer for deposit in the general fund.~~
3. Each applicant for a license under this chapter shall give bond payable to this state with good security as approved by the commission. The bond must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.
4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise workers, veterinarians, valets, concessionaires, service providers, employees of racing associations, and such other persons as determined by the commission. License fees are as established by the commission.

5. The commission may establish the period of time for which licenses issued under this chapter are valid.
6. The commission shall deposit all fees collected under this section in the racing commission operating fund. Subject to legislative appropriation, the commission may spend the fees for operating costs of the commission.

Approved April 7, 2005

Filed April 12, 2005

CHAPTER 469

HOUSE BILL NO. 1389

(Representatives Kretschmar, Boucher)
(Senator Fischer)

RACING BET PAYOFF FORMULAS

AN ACT to amend and reenact subsections 1, 2, and 3 of section 53-06.2-11 of the North Dakota Century Code, relating to bet payoff formulas; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁰ **SECTION 1. AMENDMENT.** Subsections 1, 2, and 3 of section 53-06.2-11 of the North Dakota Century Code are amended and reenacted as follows:

1. a. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. On the first eleven million dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. On the first thirty-five million five hundred thousand dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. On the total wagering handle in excess of thirty-five million five hundred thousand dollars in each biennium, one-half of one percent must be paid to the state treasurer to be deposited in the general fund. Breakage must be paid to the North Dakota racing commission to be deposited in the promotion fund.
- b. On the wagering handle on win, place, and show wagering pools in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to

²³⁰ Section 53-06.2-11 was also amended by section 2 of Senate Bill No. 2340, chapter 467.

twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:

- a. On the first ~~one hundred two eleven~~ million ~~four hundred thousand~~ dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
 - b. On the wagering handle in excess of ~~one hundred two eleven~~ million ~~four hundred thousand~~ dollars in each biennium, ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and ~~one-fourth~~ one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.
3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may, upon approval of the attorney general, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission. For wagering handle in excess of eleven million dollars in each biennium, breakage must be divided, one-third to the North Dakota racing commission to be deposited in the promotion fund, one-third to the charity operating the site where the wagers are placed, and one-third to the service provider.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 470

HOUSE BILL NO. 1259

(Representatives R. Kelsch, DeKrey, Delmore)
(Senators Fischer, Klein, Trenbeath)

LOTTERY ADMINISTRATION

AN ACT to create and enact chapter 53-12.1 of the North Dakota Century Code, relating to a lottery; to amend and reenact subsection 5 of section 28-32-08.1, section 50-06-22, subsection 2 of section 50-09-14, subsection 2 of section 54-10-01, subsection 7 of section 57-38-57, subsection 47 of section 57-39.2-04, and subsection 7 of section 57-39.2-23 of the North Dakota Century Code, relating to economic impact statements, the compulsive gambling prevention and treatment fund, child support setoff, annual audits, compliance with tax reporting requirements, and sales tax exemptions; to repeal chapter 53-12 of the North Dakota Century Code, relating to a lottery; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; to provide a contingent appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies or divisions of agencies:
 - a. Council on the arts.
 - b. Beef commission.
 - c. Dairy promotion commission.
 - d. Dry bean council.
 - e. Highway patrolmen's retirement board.
 - f. Indian affairs commission.
 - g. Board for Indian scholarships.
 - h. State personnel board.
 - i. Potato council.
 - j. Board of public school education.
 - k. Real estate trust account committee.
 - l. Seed commission.

- m. Soil conservation committee.
- n. Oilseed council.
- o. Wheat commission.
- p. State seed arbitration board.
- q. North Dakota lottery.

SECTION 2. AMENDMENT. Section 50-06-22 of the North Dakota Century Code is amended and reenacted as follows:

50-06-22. Compulsive gambling prevention and treatment fund - Continuing appropriation. Funds deposited in the compulsive gambling prevention and treatment fund under section ~~53-12-24~~ 53-12.1-09 are appropriated to the department on a continuing basis for the purpose of providing the services under section 50-06-21.

SECTION 3. AMENDMENT. Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter ~~53-12~~ 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which 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 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter ~~53-12~~ 53-12.1 to enforce that order may seek review of the action 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 in a proceeding under chapter 28-32.

SECTION 4. Chapter 53-12.1 of the North Dakota Century Code is created and enacted as follows:

53-12.1-01. Definitions. As used in this chapter:

1. "Director" means the director of the lottery.
2. "Lottery" means the division of the attorney general's office created to operate a lottery.
3. "Online lottery" means a game linked to a central computer via a telecommunications network in which the player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols.

4. "Retailer" means a person the lottery has licensed to sell or redeem a ticket.
5. "Ticket" means an original tangible evidence of play prescribed by the lottery and produced by a lottery terminal or a properly and validly registered subscription play to prove participation in a draw of a game for a chance to win a prize.

53-12.1-02. Lottery - Administration - Line of credit.

1. There is established a division of the attorney general's office called the North Dakota lottery. Under the supervision of the attorney general, a director shall administer the lottery as provided in this chapter. The director shall consider the sensitive nature of the lottery, promote games, and ensure the integrity, security, and fairness of the lottery's operation. The lottery is solely responsible for the management and control over the operation of its games.
2. The attorney general's office may arrange a short-term line of credit with the Bank of North Dakota should lottery funds on hand be insufficient to meet an immediate major prize obligation. The line of credit is limited to the amount of each prize of one hundred thousand dollars or more that relates to prize funds known to be due and forthcoming to the lottery from other government-authorized lotteries through the multistate lottery association. However, the line of credit may not exceed one million dollars in the aggregate.

53-12.1-03. Director - Responsibilities.

1. The attorney general shall appoint a director who shall serve at the pleasure of the attorney general.
2. Subject to policy of the attorney general, the director shall:
 - a. Employ those persons deemed necessary to operate the lottery and provide secure facilities to house the lottery;
 - b. Enter a written agreement with one or more government-authorized lotteries, or with an organization created and controlled by those lotteries, for conducting and marketing a joint lottery game;
 - c. Provide for a secure computer data center and internal control system for the reliable operation of the lottery;
 - d. Prepare and submit a budget for operating the lottery;
 - e. Operate the lottery so it is self-sustaining and self-funded;
 - f. Maintain books and records which accurately reflect each day's financial transactions, including the sale of tickets, receipt of funds and fees, prize payments, and expenses to ensure accountability;
 - g. License a retailer to sell or redeem a ticket;

- h. Require a retailer to furnish proof of financial stability or post a bond in an amount the director deems necessary to protect the financial interest of the state;
- i. Timely and efficiently transfer lottery funds due from a retailer;
- j. Conduct a retailer promotion to promote the sale of a ticket;
- k. As necessary, enter a contract for a promotional service, an annuity for the payment of a prize, credit history report, security service, service from another state agency, marketing and related service, gaming system and related service, and other necessary service;
- l. Based on reasonable ground or written complaint, suspend or revoke a retailer's license or impose a monetary fine, or both, for a violation, by the retailer or employee of the retailer, of a lottery law or rule;
- m. Examine, or cause to be examined by an agent designated by the director, any book or record of a retailer to ensure compliance with the lottery law and rules;
- n. Upon request, report to the legislative council regarding the operation of the lottery;
- o. Make quarterly and annual financial reports to the governor and attorney general and a biennial report to the legislative assembly;
- p. Have an annual audit, conducted by the state auditor, of the lottery. The director shall present the audit report to the governor, state treasurer, and legislative assembly;
- q. As necessary, have an independent firm conduct a study and evaluation of security; and
- r. As necessary, conduct a survey of retailers and players or a study of reactions of citizens to present and potential features of the lottery.

53-12.1-04. Advisory commission - Penalty.

1. There is created the lottery advisory commission, which is composed of five members, three of whom are legislators selected by the chairman of the legislative council and two of whom are selected by the attorney general. The term of office is three years, expiring on June thirtieth with no more than two terms expiring in any one year. Of the first members appointed, one must be appointed for a term of one year, two must be appointed for terms of two years, and two must be appointed for terms of three years. No member may be appointed to more than two consecutive terms. Each member must be a citizen of the United States and a resident of this state. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the commission each fiscal year. A member may serve as chairman for more than one year.

2. The lottery advisory commission shall meet at least once a quarter and any additional meetings as the chairman deems necessary. Special meetings may be called by the chairman upon the written request of the director or any three members of the commission.
3. The lottery advisory commission shall advise the director and attorney general on policy and general operation of the lottery and shall serve as the audit committee.
4. A member of the lottery advisory commission who is not a permanent full-time state employee is to be compensated at a rate of seventy-five dollars per day and entitled to mileage and expenses as provided by law for state employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
5. No member of the lottery advisory commission, employee of the lottery, or any individual who regularly resides in the same household as either of those individuals may directly or indirectly, individually, as a partner of a partnership, or a stockholder, director, or officer of a corporation, have an interest in the gaming system or advertising agency vendor of the lottery. A knowing violation of this subsection is a class B misdemeanor.

53-12.1-05. Competitive bidding - Investigation of a vendor. Before a contract for a gaming system or marketing services is awarded, the director shall:

1. Use an open and competitive bid process which reflects the best interest of the state. The director shall consider all relevant factors, including security, competence, experience, timely performance, and maximization of net proceeds; and
2. Conduct a thorough background investigation of the lottery's gaming system and advertising agency vendors, all shareholders of ten percent or more interest, and all senior officers and directors of the vendors, including a parent or subsidiary corporation of the vendors. The director may use information of another government-authorized lottery or other source to determine the qualification and background of the vendors. The vendors shall submit appropriate investigation authorizations. The director may require any appropriate information from the vendors to preserve the integrity and financial security of the lottery.

53-12.1-06. Retailer application - Fees - Display of license.

1. An applicant for a license does not have a right to a license or granting of the approval sought. A license issued or approval granted is a suspendable or revocable privilege, and the holder does not acquire any vested interest in the license or approval granted.
2. An applicant for a license that has had an application denied or a license revoked may not reapply until at least one year has elapsed from the date of the denial or revocation unless the director determines that the reason for the denial of the application or revocation of the license has been remedied. A person who has had an application denied or a license revoked for a second time may not reapply until at least three years have passed since the date of the second denial or

revocation. The decision of the director to deny an application or revoke a license is final and not appealable.

3. The director may charge an application fee to a person applying to become a retailer and a license fee.
4. A retailer license is:
 - a. Renewable annually unless it is sooner relinquished, suspended, or revoked;
 - b. Not transferable or assignable to another person; and
 - c. Required to be conspicuously displayed at the retailer's site.

53-12.1-07. Selection and qualifications of a retailer.

1. The director shall select a person that the director deems best able to serve the public convenience and promote the sale of a ticket. The director shall consider relevant factors, including applicant's credit history, physical security and public accessibility of the applicant's site, integrity, sufficiency of existing retailers to serve the public convenience, especially in a geographically remote area of the state, and volume of expected sales of tickets. A person lawfully engaged in nongovernmental business on state property or a person within the exterior boundary of an Indian reservation or on tribal trust land may be selected as a retailer.
2. A retailer may not be the lottery's gaming system or advertising agency vendor or an employee or agent of the vendor.
3. To be eligible as a retailer, an individual acting as a sole proprietor must:
 - a. Have a satisfactory credit check;
 - b. Be current in payment of all taxes, interest, and penalties owed to the state and be current under a payment plan, excluding an item under formal dispute or appeal pursuant to law;
 - c. Be at least eighteen years of age;
 - d. Be of good character and reputation;
 - e. Not have been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony;
 - f. Not have been found to have knowingly violated a lottery law or rule;
 - g. Not have been found to have a background, including a criminal record, or prior activities that pose a threat to the public interests of this state or to the security and integrity of the lottery, create or enhance the dangers of unsuitable or illegal practices in the conduct of lottery activities, or present questionable business

practices and financial arrangements incidental to the lottery activity;

- h. Not be a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of an employee of the lottery or member of the lottery advisory commission; and
 - i. Not have knowingly made a false statement of material fact to the lottery.
- 4. To be eligible as a retailer, a partnership must meet the requirement of subdivision a of subsection 3 and each partner must meet the requirements of subdivisions b through i of subsection 3.
- 5. To be eligible as a retailer, an organization other than a partnership must meet the requirements of subdivisions a and b of subsection 3 and each officer and director who is primarily responsible for making financial decisions and each shareholder who owns ten percent or more of an ownership interest in the organization must meet the requirements of subdivisions c through i of subsection 3.

53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited - Price of a ticket - Sale by retailer only - Retailer second chance drawing - Prize paid to owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.

- 1. A ticket may not be bought by or otherwise provided to, and a prize may not be paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of the following individuals:
 - a. A member of the lottery advisory commission or employee of the lottery, unless authorized in writing by the director; or
 - b. An officer or employee of the lottery's gaming system vendor.

A person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
- 2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
- 3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated on the license. A retailer may not sell a ticket at a price greater than the price set by the lottery rules. A person convicted of violating this subsection is guilty of a class A misdemeanor on the first offense and a class C felony on a subsequent offense.
- 4. A retailer may conduct a second chance drawing of entry forms or nonwinning tickets to promote the sale of a ticket at that site.
- 5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any other person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

6. The prize to be paid or awarded for a winning ticket must be paid to the person who the director determines is the owner of the ticket. However, the prize of a deceased winning player must be paid to the lawful representative of the estate.
7. If an individual steals a ticket from a retailer, the individual is guilty of a class A misdemeanor. However, if the total value of the tickets stolen exceeds five hundred dollars, the offense is a class C felony.
8. A prize awarded is subject to state and federal income tax laws and rules.
9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount gained, is guilty of a class C felony.
10. The state, members of the lottery advisory commission, and employees of the lottery are discharged of all further liability upon payment of a prize.

53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds. There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a winning ticket or lottery promotion paid by a retailer and the retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated expenditures for the current biennium and projected expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Payment of a gaming system or related service expense, game group dues, and retailer commissions; and
3. Transfer of net proceeds:
 - a. Starting July 1, 2005, fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;
 - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association; and
 - c. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

53-12.1-10. Administrative and other operating costs of the lottery - Lottery operating fund. Money in the lottery operating fund may be spent pursuant to legislative appropriation for costs of administering and operating the lottery, including costs relating to employees, supplies, surveys, advertising and marketing, printing, promotion, premium incentive items, a facility, and services provided by another state agency.

53-12.1-11. Confidentiality of records.

1. The following information and records of the lottery are confidential:
 - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
 - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;
 - c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
 - d. Personal information on a winning player unless the player authorizes, in writing, release of the information; and
 - e. Lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.
2. To be confidential, information must relate to the security and integrity of the lottery. Information and records may be disclosed within the attorney general's office or to an authorized person in the proper administration of the lottery law and rules or in accordance with a judicial order. Criminal history record check information on an individual seeking or doing business with the lottery may be released only according to chapter 12-60.

53-12.1-12. Setoff of prize.

1. A claimant agency and the director shall cooperate on the setoff of a lottery prize against a delinquent debt. A claimant agency is an agency of the state of North Dakota that a person owes money to or that collects money on behalf of another party to satisfy a debt. The claimant agency and director shall share necessary information, including the person's full name, social security number, and amount and type of debt, through a mutually convenient method to timely achieve a setoff of a prize.
2. The director shall establish a debt setoff process in which a lottery prize claim of an amount equal to or greater than six hundred dollars must be used to setoff a delinquent debt owed to or collected through a claimant agency.

3. If the director determines that a winning player owes a delinquent debt to or has a delinquent debt collected through a claimant agency, the director shall set off the amount of the debt from the prize due and notify the player, in writing, of the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize must be paid to the player. The director shall transfer the setoff amount to the claimant agency unless the player notifies the director, in writing, within thirty days of the date of the notice of the setoff, that the player disputes all or part of the debt owed to or collected through the claimant agency. If the director receives a notification that the player disputes the setoff amount or claim upon which the setoff is based, the director shall grant a hearing to the player to determine whether the setoff is proper or the claim is valid, unless a review by a court is authorized under section 50-09-14. At a hearing, no issue may be reconsidered that the player has or could have previously litigated in a court or administrative proceeding.
4. The lottery is discharged of all further liability for the amount of any debt setoff paid to a claimant agency.
5. If two or more claimant agencies have delinquent accounts for the same player, the director shall apportion the prize equally among them. However, a setoff to the department of human services for child support payments has priority over all other setoffs.
6. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by a claimant agency as provided by law or rule and resubmitted for setoff against any other prize awarded.
7. If two or more claimant agencies make adverse claims to all or a part of a prize payment, upon receipt of written notice from the claimant agencies setting forth their claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. If one of the claims is for child support, the director shall transfer the setoff amount to the state disbursement unit before depositing any remaining prize payment or award. Any review of this transfer to the state disbursement unit must be done pursuant to section 50-09-14. Upon making the deposit or transfer, the state and its officials and employees are discharged and relieved from further liability to any person or claimant agency related to the prize payment.

53-12.1-13. Rules. The attorney general shall adopt rules governing the operation of the lottery. The attorney general may adopt emergency rules as necessary without the grounds otherwise required under section 28-32-03. The attorney general shall adopt rules to address any matters necessary for the efficient operation of the lottery or convenience of the public, including:

1. Type of retailer where a ticket may be sold;
2. Qualification for selecting a retailer and amount of application and license fees;
3. Licensing procedure;

4. Method used to sell a ticket, including a gift certificate and subscription;
5. Financial responsibility of a retailer;
6. Retailer promotions;
7. Amount and method of commission to be paid to a retailer, including a special bonus or incentive;
8. Deadline for claiming a prize by the owner of a winning ticket, however, the deadline may not exceed one year;
9. Manner of paying a prize to the owner of a winning ticket; and
10. Setoff of a prize.

SECTION 5. AMENDMENT. Subsection 2 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

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. Except for the annual audit of the North Dakota lottery required by section ~~53-12-07~~ 53-12.1-03, 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 non-general fund moneys. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

SECTION 6. AMENDMENT. Subsection 7 of section 57-38-57 of the North Dakota Century Code is amended and reenacted as follows:

7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of ~~subdivision d of subsection 4 subsections 3, 4, and 5 of section 53-12-13 and subdivision d of subsection 4 of section 53-12-44~~ 53-12.1-07.

²³¹ **SECTION 7. AMENDMENT.** Subsection 47 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

47. Gross receipts from the sale of lottery tickets under chapter ~~53-12~~ 53-12.1.

SECTION 8. AMENDMENT. Subsection 7 of section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of ~~subdivision d of subsection 4~~ subsections 3, 4, and 5 of section 53-12-13 and subdivision d of subsection 4 of section 53-12-14 53-12.1-07.

SECTION 9. REPEAL. Chapter 53-12 of the North Dakota Century Code is repealed.

SECTION 10. APPROPRIATION - ATTORNEY GENERAL - LOTTERY. There is appropriated out of any moneys in the lottery operating fund in the state treasury, not otherwise appropriated, the sum of \$3,620,171, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the administrative and other operating costs of the North Dakota lottery, for the biennium beginning July 1, 2005, and ending June 30, 2007. The attorney general is authorized nine full-time equivalent positions for administering the lottery.

SECTION 11. CONTINGENT APPROPRIATION - ADDITIONAL LOTTERY FUNDING - BUDGET SECTION REPORT. There is appropriated out of any moneys in the lottery operating fund in the state treasury, not otherwise appropriated, the sum of \$279,020, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying additional administrative and other operating costs of the North Dakota lottery if these costs exceed the funding appropriated in section 10 of this Act, for the biennium beginning July 1, 2005, and ending June 30, 2007. The attorney general is authorized to hire up to two additional full-time equivalent positions under this section. The attorney general shall report any expenditures made or employees hired pursuant to this section to the budget section. If the additional funding and full-time equivalent authorization provided by this section is not adequate, the attorney general may seek emergency commission approval for additional spending or full-time equivalent authority.

²³¹ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 4, 2005

Filed May 4, 2005

STATE GOVERNMENT

CHAPTER 471

SENATE BILL NO. 2311

(Senators J. Lee, Brown)
(Representatives Hawken, Thoreson)

UNLAWFUL USE OF GREAT SEAL

AN ACT to amend and reenact subsection 2 of section 54-02-01 of the North Dakota Century Code, relating to unlawful use of the great seal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-02-01 of the North Dakota Century Code is amended and reenacted as follows:

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 or except as provided in subsection 1, to utilize or place a copy or reproduction of the great seal on any stationery or business calling card of any person.

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.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 472

SENATE BILL NO. 2059

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE ASSEMBLY LODGING REIMBURSEMENT

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to lodging expense reimbursement for 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:

²³² **SECTION 1. AMENDMENT.** Section 54-03-20 of 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 one hundred twenty-five dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of ~~six~~ nine 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 be only at the cost of coach fare and may not exceed 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~~ nine 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.

²³² Section 54-03-20 was also amended by section 17 of House Bill No. 1015, chapter 15, and section 10 of Senate Bill No. 2001, chapter 29.

If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend. A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting 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 two hundred 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. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

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, 2005.

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

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 473**SENATE BILL NO. 2039**

(Legislative Council)
(Legislative Management Committee)

LEGISLATIVE ORGANIZATIONAL SESSION MEETING

AN ACT to amend and reenact section 54-03.1-02 of the North Dakota Century Code, relating to the meeting of the legislative organizational session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

54-03.1-02. Time and place of meeting - Who must attend. In each even-numbered year on the ~~first Tuesday after the~~ first Monday in the month of December or on a date selected by the legislative council but not earlier than December first nor later than December fifteenth, all persons elected at the previous November general election as members of the succeeding legislative session, and members whose terms do not expire until the first day of December following the next November general election, shall meet in the state capitol in the city of Bismarck, or at such other place as may be designated, ~~at the hour of nine a.m. a~~ time designated by the legislative council for the purpose of conducting an organizational session. The legislative council shall call the organizational session and make such arrangements as may be necessary for its operation.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 474

SENATE BILL NO. 2303

(Senators Fairfield, Bercier, Seymour, Warner)
(Representatives Gulleason, Kaldor)

LOBBYIST REGISTRATION AND REPORTING

AN ACT to amend and reenact sections 54-05.1-03 and 54-05.1-04 of the North Dakota Century Code, relating to lobbyist registration and reporting requirements and the authority of the secretary of state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-05.1-03. Registration as a lobbyist - Fee - Filing of information - Public inspection - Certificate of registration.

1. a. ~~Any person who shall engage or be engaged by any other person either on a part-time or on a full-time basis for~~ Before engaging in any of the activities listed in section 54-05.1-02, ~~an individual shall, before doing anything in furtherance of such purposes,~~ register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters].
- b. The registrant shall state in writing ~~the~~:
 - (1) The registrant's full name and business address, ~~the~~; and
 - (2) The name and address of ~~the any person or persons~~ upon whose behalf the registrant appears, ~~all persons, corporations, limited liability companies, associations, groups, or organizations~~ any person in whose interest the registrant appears or works, the duration of ~~such the~~ employment or appearances, and by whom the registrant is paid or is to be paid.
- c. The registration period commences on July first and expires on June thirtieth of the following calendar year unless an earlier expiration date is requested by the registrant. ~~Lobbyists required to be registered~~

- d. Each lobbyist shall file with the secretary of state, ~~prior to before~~ the issuance of a certificate of registration, a written authorization to act as a lobbyist. ~~Such~~ The authorization must be signed by the ~~person or~~ official of the corporation, limited liability company, association, group, or organization employing ~~such~~ the lobbyist and may be filed by facsimile transmission.
- e. The secretary of state shall charge a fee of ~~twenty~~ twenty-five dollars for registering each lobbyist and the first person ~~or entity~~ represented by the lobbyist and an additional fee of five dollars for each subsequent person ~~or entity~~ represented by the lobbyist.
2. Each ~~person registering to act as~~ a lobbyist shall file, on or before August first following the expiration of the registration period, with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of ~~fifty~~ sixty dollars or more expended on any single occasion ~~during the legislative session or the interim, as the case may be,~~ on any individual, including the spouse or other family member of a member of the legislative assembly or the governor, in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. The statement of each expenditure must include a description of the nature of the expenditure, the amount of the expenditure, the date of the expenditure, and the name of the recipient of the expenditure. A state official or agency may not require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide a prescribed form for reporting ~~pursuant to under~~ this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:
- a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars; and
- b. Thereafter, fifty dollars; and.
- e.
3. If any currently registered a lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.
3. 4. All information required to be filed under ~~the provisions of~~ this section with the secretary of state and that previously filed must be compiled by the secretary of state within forty days after the close of the period for which ~~such~~ the information is filed and ~~such~~ the files must be open and accessible for public inspection during the normal working hours.

SECTION 2. AMENDMENT. Section 54-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-05.1-04. Powers of secretary of state - Granting and revoking of certificates - Referrals and reports to the attorney general.

1. ~~It is the duty and responsibility of the~~ The secretary of state shall:

- a. ~~To grant~~ Grant a certificate of registration and ~~to design and furnish~~ a distinctive lobbyist identification badge to any ~~person~~ individual registering under section 54-05.1-03 who supplies the required information ~~therein required~~.
 - b. ~~To revoke~~ Revoke the certificate of registration of any ~~person~~ individual who has been convicted of violating any ~~of the provisions~~ provision of this chapter.
 - c. ~~To refer~~ Refer on the secretary of state's own motion or on the verified complaint of any ~~member of the legislative assembly or on the verified complaint of any state official, board, commission, department, or agency, or on the verified complaint of any other person,~~ to the attorney general for investigation, the activities of any ~~person~~ individual who the secretary of state has reason to believe has been acting as a lobbyist and who may be in violation of ~~the requirements~~ of this chapter.
 - d. ~~To make~~ Make available upon request of any citizen expenditures by categories reported by registered lobbyists to have been expended on each individual in carrying out that ~~person's~~ registrant's work.
 - e. ~~To supply~~ Supply a current list of registered lobbyists for each legislator upon request.
2. ~~In addition, the~~ The secretary of state may revoke the certificate of registration issued ~~pursuant to~~ under this chapter for failure to file the reports required by this chapter when due, but no certificate may be revoked if, ~~prior to~~ before the last day for filing ~~such the~~ reports, the secretary of state has been informed in writing of extenuating circumstances justifying ~~such the~~ failure.
 3. The secretary of state shall compile and make available to the public a report of the total amount of expenditures reported by registrants.
 4. The secretary of state may establish procedures for registration of lobbyists and filing of lobbyist expenditure reports through the internet or other electronic means, and may make lobbyist expenditure reports available on the secretary of state's internet web site.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 475

SENATE BILL NO. 2058

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

STATE EMPLOYEE MILEAGE AND TRAVEL REIMBURSEMENT

AN ACT to amend and reenact subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code, relating to mileage and travel expense reimbursement for state officials and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~thirty-one~~ thirty-seven and one-half cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when 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 entity. The sum of seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when 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:
 - (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.

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 ~~thirty-one~~ thirty-seven and one-half 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 three-hundred-mile [482.80-kilometer] restriction imposed by subsection 3 does not apply.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 476

SENATE BILL NO. 2298

(Senators Christmann, Dever, Kilzer)
(Representatives Pollert, Sitte, Thoreson)

ORGAN AND BONE MARROW DONATIONS

AN ACT to provide for bone marrow donor education and leave of absence for state employees donating an organ or bone marrow.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Bone marrow donor education. The state department of health shall provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program. The department shall seek assistance from the national marrow donor program to establish a system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations.

SECTION 2. State employee leave for organ or bone marrow donation. The executive officer in charge of a state agency may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow. Notwithstanding the limitations for the donation and use of donated leave under sections 54-06-14.1 and 54-06-14.2, an employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow. If an employee requests donations of sick leave or annual leave, but does not receive the full amount needed for the donation of an organ or bone marrow, the executive officer of the state agency may grant a paid leave of absence for the remainder of the leave up to the maximum total of twenty workdays. The executive officer of the state agency may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested. Any paid leave of absence granted under this section may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

Approved April 20, 2005

Filed April 25, 2005

CHAPTER 477

SENATE BILL NO. 2069

(Government and Veterans Affairs Committee)
(At the request of the State Auditor)

STATE AUDITOR RECORDS ACCESS

AN ACT to amend and reenact sections 54-10-02 and 54-10-22.1 of the North Dakota Century Code, relating to the state auditor's access to records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-02 of the North Dakota Century Code is amended and reenacted as follows:

54-10-02. Auditor to have access to all state offices. The Except for active investigatory work product of the attorney general as defined in section 44-04-19.1, the state auditor shall have access to all state offices during business hours for the purpose of inspecting such books, papers, and accounts, and records therein as may concern the state auditor's duties. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, access includes inspection of any books, papers, accounts, or records that the state auditor may deem relevant to an ongoing audit of any other state agency or computer system audit.

SECTION 2. AMENDMENT. Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit. Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 478

HOUSE BILL NO. 1075

(Political Subdivisions Committee)
(At the request of the State Auditor)

POLITICAL SUBDIVISION AUDIT FEES

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to payment of audit fees by political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³³ **SECTION 1. AMENDMENT.** Section 54-10-14 of 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. 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 career and technology centers.
13. Correction centers.
14. Recreation service districts.

²³³ Section 54-10-14 was also amended by section 1 of House Bill No. 1300, chapter 479.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. 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. ~~The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees 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. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

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, park districts with less than two hundred thousand dollars of annual receipts, 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 also may make any additional examination or audit 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, 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 report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the 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.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 479

HOUSE BILL NO. 1300

(Representatives Weisz, DeKrey, Pollert)
(Senators Erbele, Klein)

POLITICAL SUBDIVISION AUDIT EXEMPTIONS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to exemptions from audit requirements for certain political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁴ **SECTION 1. AMENDMENT.** Section 54-10-14 of 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. 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 career and technology centers.
13. Correction centers.
14. Recreation service districts.

²³⁴ Section 54-10-14 was also amended by section 1 of House Bill No. 1075, chapter 478.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. 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. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees 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. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

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; park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts; and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit 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, 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 report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the 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.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 480**SENATE BILL NO. 2072**

(Political Subdivisions Committee)

(At the request of the State Auditor)

COUNTY ACCOUNTING MANUAL REPEAL

AN ACT to repeal section 54-10-17 of the North Dakota Century Code, relating to the maintenance of a county accounting manual by the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-10-17 of the North Dakota Century Code is repealed.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 481

SENATE BILL NO. 2071

(Government and Veterans Affairs Committee)
(At the request of the State Auditor)

STATE AUDITOR DUTIES

AN ACT to amend and reenact subsection 5 of section 54-10-28 of the North Dakota Century Code, relating to the duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 54-10-28 of the North Dakota Century Code is amended and reenacted as follows:

5. Present results of information technology compliance reviews to the information technology committee and the ~~information technology department's enterprise architecture~~ state information technology advisory committee.

Approved March 21, 2005

Filed March 21, 2005

CHAPTER 482

HOUSE BILL NO. 1074

(Appropriations Committee)
(At the request of the State Auditor)

COMPUTER SYSTEM AUDITS

AN ACT to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to audits of computer systems by the state auditor; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

Audits of computer systems - Penalty.

1. The state auditor may:
 - a. Pursuant to the powers and duties outlined in this chapter, conduct a review and assessment of computer systems and related security systems. Computer systems subject to this section include the computer systems of a state agency or political subdivision that is subject to audit by the state auditor. Tests conducted in connection with this review and assessment may include an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.
 - b. Disclose any findings to the chief information officer of the state or to any state official or legislative committee. Working papers and preliminary drafts of reports created in connection with the review of computer systems and the security of the systems are exempt from section 44-04-18. Those parts of findings and working papers that identify the methods of the state auditor or that may cause or perpetuate vulnerability of the computer system reviewed are exempt from section 44-04-18 and protected from disclosure until the state auditor directs otherwise.
 - c. Procure the services of a specialist in information security systems or other contractors deemed necessary in conducting a review under this section. The procurement of these services is exempt from the requirements of chapter 54-44.4.
2. An outside contractor hired to provide services in the review of the security of a computer system is subject to the confidentiality provisions of this section and section 44-04-27. Any individual who knowingly discloses confidential information is subject to the provisions of section 12.1-13-01.
3. The state auditor shall notify the executive officer of any state agency or the governing body of any political subdivision of the date, time, and location of any test conducted in connection with a review and

assessment of computer systems or related security systems. The executive officer or a deputy executive officer or a member of the governing body of a political subdivision shall attend and observe any test during which confidential information may be accessed or controlled. An executive officer, a deputy executive officer, or a member of the governing body of a political subdivision receiving notice of any test conducted under this section may not inform any other individual of the scheduling and conduct of the test.

4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.
5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 483**HOUSE BILL NO. 1046**

(Representative Wald)

STATE TREASURER DISTRIBUTION CORRECTION

AN ACT to create and enact a new subsection to section 54-11-01 of the North Dakota Century Code, relating to the correction of erroneous distributions by the state treasurer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-11-01 of the North Dakota Century Code is created and enacted as follows:

Correct any underpayment, overpayment, or erroneous payment of tax distribution funds by the state treasurer.

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

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 484**HOUSE BILL NO. 1034**

(Legislative Council)
(Emergency Services Committee)

ATTORNEY GENERAL COUNSEL TO HEALTH BOARD

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to authorizing the attorney general to provide legal counsel to boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Attorney general may provide counsel to boards of health. The attorney general, upon the request of a board of health established under chapter 23-35, may provide legal counsel or a written legal opinion to the board of health. The attorney general may enter an agreement with a board of health for reimbursement of expenses incurred by the attorney general in providing legal counsel to the board of health.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 485

SENATE BILL NO. 2098

(Political Subdivisions Committee)

(At the request of the Secretary of State)

EMERGENCY COMMISSION PETITION FILING

AN ACT to amend and reenact sections 54-16-03.1 and 54-16-11.1 of the North Dakota Century Code, relating to filing of petitions with the emergency commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-03.1. Submission of petition to emergency commission. When an emergency exists, a state officer may present to the emergency commission an itemized, ~~verified~~ petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; or accept and expend other funds pursuant to section 54-16-04.2.

SECTION 2. AMENDMENT. Section 54-16-11.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of a ~~verified~~ petition establishing that an emergency exists and the necessity for increased appropriation authority, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for the information technology department, central duplicating, surplus property, or roughrider industries division of the department of corrections and rehabilitation.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 486

HOUSE BILL NO. 1278

(Representatives Delzer, Berg, Svedjan)
(Senators Holmberg, Stenehjem)

FEDERAL FUNDS DEPOSIT

AN ACT to amend and reenact section 54-16-04.1 of the North Dakota Century Code, relating to the appropriation of federal funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04.1. May authorize acceptance and disbursement of federal funds.

1. The emergency commission, upon the advice and counsel of the office of management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject.
2. The emergency commission may authorize passthrough federal funds from one state agency to another state agency.
3. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session.
4. Any federal funds made available to this state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session, upon the approval for acceptance by the emergency commission and the budget section of the legislative council, must be deposited into a special fund until the legislative assembly appropriates the funds.
5. a. Approval by the budget section of the legislative council is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.
b. Budget section approval is required before the expenditure of any funds accepted under these conditions.
6. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly.

7. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.
8. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 487

SENATE BILL NO. 2130

(Political Subdivisions Committee)
(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION ADVISORY BOARD COMPENSATION

AN ACT to amend and reenact sections 6-09-02.1, 54-17-03, 54-17.5-02, and 54-17.6-05 of the North Dakota Century Code, relating to the industrial commission's authority to set the compensation for various advisory boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09-02.1. Declaration and finding of public purpose - Bank of North Dakota advisory board of directors. To enlist the help of private enterprise and to encourage more active use of the purposes for which the Bank of North Dakota was created, the governor shall appoint an advisory board of directors to the Bank of North Dakota consisting of seven persons, at least two of whom must be officers of banks, the majority of the stock of which is owned by North Dakota residents, and at least one of whom must be an officer of a state or federally chartered financial institution. The governor shall appoint a chairman, vice chairman, and secretary from the advisory board of directors. The term of the directors is four years. The industrial commission shall define the duties ~~and fix the compensation~~ of the advisory board of directors.

²³⁵ **SECTION 2. AMENDMENT.** Section 54-17-03 of the North Dakota Century Code is amended and reenacted as follows:

54-17-03. Chairman and attorney - Secretary - Employees - Compensation - Bonds. The governor is the chairman of the industrial commission, and its attorney is the attorney general. In the transaction of its general business, the commission shall appoint a secretary and may employ other subordinate officers, employees, and agents, on such terms as it may deem proper and as, in its judgment, the public interests may require. The commission may require suitable bonds of its secretary or other subordinate officers, employees, or agents. It shall fix the amount of the compensation of each person so engaged. The compensation, together with other expenditures for operation and maintenance of the general business of the commission, must remain within the appropriation available in each year for such purpose. The commission may set the compensation, within the limits of legislative appropriation, for members of a board, committee, or council that advises the commission. Notwithstanding any other provision of law, the compensation for any board, committee, or council member may include

²³⁵ Section 54-17-03 was also amended by section 29 of Senate Bill No. 2014, chapter 42.

reimbursement for expenses, a salary, a per diem, or a combination of the three, as set by the commission.

SECTION 3. AMENDMENT. Section 54-17.5-02 of the North Dakota Century Code is amended and reenacted as follows:

54-17.5-02. Lignite research council - Compensation. The industrial commission shall consult with the lignite research council established by executive order in matters of policy affecting the administration of the lignite research fund. ~~Members of the lignite research council may receive reimbursement from the lignite research fund for actual and necessary expenses incurred in the performance of their duties, if authorized by the industrial commission.~~

SECTION 4. AMENDMENT. Section 54-17.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-17.6-05. Oil and gas research council - Members.

1. The oil and gas research council is composed of seven members, four of whom must currently be engaged in and have at least five years of active experience in the oil and natural gas exploration and production industry. The council consists of:
 - a. Four members appointed by the governor from a list provided by the North Dakota ~~oil and gas association~~ petroleum council. The governor may reject the list and request the ~~association~~ council to submit a new list until the appointments are made.
 - b. One member appointed by the governor from a list provided by the North Dakota association of oil and gas producing counties. The governor may reject the list and request the association to submit a new list until the appointment is made.
 - c. The executive director of the North Dakota petroleum council, or the executive director's designee.
 - d. A county commissioner from an oil producing county appointed by the governor.
 - e. The director of the oil and gas division and the state geologist shall serve on the council as advisory nonvoting members.
2. Subject to subsection ~~7 6~~, the terms of office for members of the council are three years but of those first appointed, two serve for one year, two serve for two years, and three serve for three years.
3. The council shall select its chairman from among its members.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any three members. Four members constitute a quorum.
5. The council shall recommend to the commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding,

research, development, marketing, and educational projects or activities and any other matters related to this chapter.

6. ~~Each member of the council is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state offices.~~
7. Members of the council appointed by the governor serve at the pleasure of the governor.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 488

HOUSE BILL NO. 1526

(Representatives Berg, Boucher, Charging, Vigesaa)
(Senators Stenehjem, O'Connell)
(Approved by the Delayed Bills Committee)

TRIBAL-STATE GUARANTY PROGRAM

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to creation of an industrial commission tribal-state guaranty program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Tribal-state guaranty program.

1. The industrial commission shall establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in this state. The industrial commission shall establish program guidelines and shall establish program application forms. The industrial commission shall adopt policies and procedures as necessary to implement this program. The Bank of North Dakota may charge fees to participants in the program. The industrial commission shall limit participation in the program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed five million dollars at any one time.
2. In the case of a payment dispute, the program must provide a participating North Dakota business with sure and certain payment of receivable owing under the contract between the North Dakota business and the tribal-owned or Indian-owned business. Any litigation over a payment dispute must be conducted by the participating businesses and is not the responsibility of the industrial commission, the Bank of North Dakota, or this guaranty program. The industrial commission shall establish a guaranty reserve board. The board membership, which may not exceed twelve members, consists of the attorney general or the attorney general's representative, who serves as chairman of the board; the president of the Bank of North Dakota or the president's representative; one representative for each participating tribal government; and representatives of private business equal to the number of tribal government representatives serving on the board. Each North Dakota Indian tribe that participates in the program may appoint one board member to serve a two-year term. A tribally appointed member serves at the pleasure of the appointing tribal government. The board members representing private business serve two-year terms to run concurrently with the corresponding tribally appointed member. The members of the industrial commission shall take turns appointing the board members representing private business,

in the following order: governor, attorney general, and agriculture commissioner. Each member representing private business serves at the pleasure of the industrial commission and any vacant position must be filled by an individual appointed by the member of the industrial commission making the original appointment. The board must meet annually, or more often as may be determined necessary by the chairman, for the purpose of reviewing participation in the program and conducting the business of the board.

3. To participate in the program, all parties must agree that for purposes of the program and related business contract issues any claim or dispute between any of the parties are governed by the laws of the state of North Dakota and any claim or dispute between the parties must be brought in Burleigh County district court in Bismarck or by agreement of the parties may be brought to a mutually agreed-upon arbitrator. To participate in the program, the business owned by a North Dakota Indian tribe or the Indian-owned small business must have secured the pledge of a North Dakota Indian tribe or a tribally approved entity to guarantee repayment to the guaranty program for any payments made due to payment disputes. This repayment guarantee must be consistent with the policies and procedures established by the industrial commission to implement this program.
4. If the Bank of North Dakota provides a North Dakota business with a payment due to a payment dispute, as a guarantor the board is an assignee and as such may seek reimbursement from a third party or from the North Dakota business for any payment made under the program.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 489

SENATE BILL NO. 2150

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

BUILDING AUTHORITY PROJECT FINANCING

AN ACT to amend and reenact sections 54-17.2-01, 54-17.2-02.1, and 54-17.2-02.2, subsections 1 and 7 of section 54-17.2-03, and sections 54-17.2-04, 54-17.2-06, 54-17.2-07, 54-17.2-08, 54-17.2-09, 54-17.2-10, 54-17.2-11, 54-17.2-16, and 54-17.2-19 of the North Dakota Century Code, relating to financing by the building authority of projects authorized by the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-01. Definitions. As used in this chapter, unless the context or subject matter requires otherwise:

1. "Commission" means the industrial commission acting as the North Dakota building authority created under this chapter.
2. "Evidences of indebtedness" means bonds, notes, debentures, and other evidences of indebtedness issued by the commission on behalf of the state of North Dakota to evidence money owed or borrowed.
3. "Financing agreement" means a written agreement between the commission and the state with respect to a project, whereby the state agrees to pay to the commission, when due, the principal of, premium, if any, and interest on bonds issued by the commission with respect to that project. A financing agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, or take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.
4. "Project" or "projects" means any:
 - a. Legislatively authorized building or buildings primarily for the use of the state, including related structures, parking facilities, equipment, improvements, real and personal property or any interest therein, including lands under water, space rights and air rights, and other appurtenances and facilities necessary or convenient to the use or operation of the building or buildings, acquired, owned, constructed, reconstructed, extended, rehabilitated, or improved by the commission; or
 - b. Any other undertaking authorized by the legislative assembly.
4. 5. "Project cost" means the total cost of ~~acquisition and construction~~ of a project or projects and all costs of issuance, financing, and interest

during project construction or implementation included in the principal amount of evidences of indebtedness issued.

- 5- 6. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

SECTION 2. AMENDMENT. Section 54-17.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.1. Evidences of indebtedness conditions - Continued authority. The commission may issue evidences of indebtedness subject to the condition that ~~lease rental~~ payments under financing agreements shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

SECTION 3. AMENDMENT. Section 54-17.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-02.2. Continuing appropriation. The moneys received by the industrial commission from the sale of evidences of indebtedness ~~and lease rental payments~~, and moneys received by the industrial commission or the state agencies and institutions from revenue generated by projects authorized by the legislative assembly, are hereby appropriated as a continuing appropriation for the acquisition of these authorized projects and the payment of lease rentals for these construction or implementation of the authorized projects and payment of debt service on any evidences of indebtedness issued to finance the projects.

SECTION 4. AMENDMENT. Subsections 1 and 7 of section 54-17.2-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Enter into agreements, including financing agreements, with respect to its projects, operation, properties, and facilities, subject to agreements with holders of evidences of indebtedness.
7. Grant options to purchase any project or to renew any ~~lease financing agreement~~ entered into by it in connection with any of its projects, on terms and conditions it deems advisable.

SECTION 5. AMENDMENT. Section 54-17.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-04. Purpose of commission. The public purpose of the commission is to promote the general welfare of the citizens of this state by providing financing for projects for use primarily by the state in providing public services by altering, repairing, maintaining, or constructing buildings primarily for use by the state and making any improvements connected to these buildings or pertaining to these buildings and necessary to the use of these buildings in providing services to the public.

SECTION 6. AMENDMENT. Section 54-17.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-06. Lease of facilities and sites to Financing agreements with state agencies authorized - Commencement of payments under lease financing agreements. The commission may ~~lease~~ enter into financing agreements for any project ~~to~~ with the state. The ~~leases~~ financing agreements may be entered into contemporaneously with any financing to be done by the commission and payments under the terms of the lease financing agreement shall begin at any time after execution of the ~~lease~~ financing agreement.

SECTION 7. AMENDMENT. Section 54-17.2-07 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-07. Terms, conditions, and rental payment under leases financing agreements - Automatic biennial extension provisions. Leases Financing agreements may be entered into by the commission:

1. Upon terms, conditions, and ~~lease rental payment provisions~~, subject to available appropriations, as in the judgment of the commission are in the public interest; and
2. For an original term of not to exceed two years, with an automatic extension of the term of the lease financing agreement, unless specifically rejected by the legislative assembly, for a term of two years from the expiration of the original term of the lease financing agreement and for two years from the expiration of each extended term of the lease financing agreement, until the original term of the lease financing agreement has been extended for a total number of years to be agreed upon by the parties at a lease rental payment which, if paid for the original term and for each of the full number of years for which the term of the lease financing agreement may be extended, will amortize the total project cost of the project.

The ~~lease rental payment~~ must be paid at the times agreed upon by the parties to the lease financing agreement.

SECTION 8. AMENDMENT. Section 54-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-08. State's option to purchase - Conveyance on exercise of option. The lease A financing agreement must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the ~~payment of rents~~ payments previously made by the state. The lease financing agreement must provide that if the option to purchase the project has been exercised or if the lease financing agreement has been extended for the full number of years which it may be extended, and all ~~rents and~~ payments provided for in the lease financing agreement have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

SECTION 9. AMENDMENT. Section 54-17.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-09. Insurance and credit enhancements added to rental payments. The lease A financing agreement may provide that the state shall provide insurance or, as additional ~~rent for the leased project~~ payment under a financing agreement, pay the cost of insuring the project against loss or damage in such sum agreed to by the parties. The lease financing agreement may also provide

for payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

SECTION 10. AMENDMENT. Section 54-17.2-10 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-10. Appropriations and funds from which ~~rent~~ payments are payable and ~~right to project upon nonpayment~~ - Commission's power to use or sell facilities for other purposes on nonpayment of ~~rent~~. ~~The lease~~ A financing agreement must provide that ~~rents~~ payments due under the financing agreement are payable solely from appropriations to be made by the legislative assembly for ~~the~~ such payment of the lease rent or, money available to the ~~lessee~~ state not requiring appropriation, money generated from charges made for use of the project, any revenues derived by the commission from the operation of the project, or any combination of such moneys. The financing agreement may provide that the commission upon nonpayment of ~~lease rents~~ is immediately entitled to the peaceable possession, access, and occupancy of the project and all appurtenances and easements appertaining thereto, and may maintain and operate the project or execute leases for the project or sell the project to political subdivisions of the state or private persons or entities for any purpose.

SECTION 11. AMENDMENT. Section 54-17.2-11 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-11. Costs and reserves to be covered by rent and charges or other payments. ~~Lease rentals~~ Payments under a financing agreement for a project must be sufficient at all times to pay ~~the~~ any maintenance and operation costs for the project, unless the maintenance and operation costs are otherwise provided for under ~~a lease~~ the financing agreement, the principal of and interest on any evidence of indebtedness, and a proportion of the administrative expenses of the commission as provided for by each ~~lease financing agreement~~, and the reserves as may be provided in the resolutions authorizing the issuance of evidences of indebtedness.

SECTION 12. AMENDMENT. Section 54-17.2-16 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-16. Revenues, appropriations, funds, and income from which evidences of indebtedness payable. Evidences of indebtedness are payable solely from:

1. Revenues to be derived by the commission from the operation of a project or projects;
2. ~~Income to be derived~~ Payments from rentals paid the state pursuant to leases to the state financing agreements, or from leases to others as provided by this chapter;
3. Funds appropriated by the legislative assembly; and
4. Any other legally available revenue, income, or funds available to the commission.

SECTION 13. AMENDMENT. Section 54-17.2-19 of the North Dakota Century Code is amended and reenacted as follows:

54-17.2-19. Restrictions on obligation stated on face of evidences of indebtedness. Evidences of indebtedness must state upon their face that they are payable solely from ~~revenues~~ moneys derived by the commission as provided in this chapter, including ~~revenues from the operation of projects acquired, constructed, completed, remodeled, or equipped in whole or in part with the proceeds of the sale of such evidences of indebtedness, including income to be derived from rental leases as provided by this chapter.~~ Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 490

SENATE BILL NO. 2087

(Appropriations Committee)

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

CAPITOL SECURITY BY HIGHWAY PATROL

AN ACT to amend and reenact sections 44-08-18, 54-21-17.1, and 54-21-18 of the North Dakota Century Code, relating to the transfer of capitol security from the office of management and budget to the highway patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-18 of the North Dakota Century Code is amended and reenacted as follows:

44-08-18. Officials and employees of agencies located in capitol building responsible for keys issued to them - Return upon termination of employment - Agency head responsibility. Every elected and appointed state official and all state employees employed by or administering any agency, department, board, commission, or other governmental organization with offices located in the state capitol building are responsible for the safekeeping and return of keys allowing entrance to any of such offices or to the capitol building proper ~~which may have been issued to them by the office of management and budget.~~ Each official or employee shall, upon or prior to termination of employment in the state capitol, return any and all keys which may have been issued to the official or employee by the ~~office of management and budget~~ highway patrol or by the legislative council to the person in charge of such keys in the office or department in which the official or employee was employed. The person in charge, or the person's designee, shall see to the return of the keys to the ~~office of management and budget~~ highway patrol in a manner provided by rules and regulations which must be promulgated by the ~~office of management and budget~~ highway patrol. Failure to return a key must be handled as provided in section 54-06-15.

SECTION 2. AMENDMENT. Section 54-21-17.1 of the North Dakota Century Code is amended and reenacted as follows:

54-21-17.1. Director Superintendent to secure interior of capitol building - Issuance and return of keys. The ~~director superintendent~~ of the ~~office of management and budget~~ highway patrol shall see to the security of the state capitol building, and shall have control over the issuance and return of keys allowing entry to the building proper, or any door located therein. Keys to doors in the legislative wing must be issued and controlled by the legislative council when so requested by the ~~office of management and budget~~ highway patrol. The ~~office of management and budget~~ highway patrol shall ~~promulgate rules and regulations regarding~~ determine the manner in which keys are to be issued and returned, including the procedure for receiving and recording the payment of fees in lieu of return of keys provided in section 54-06-15.

SECTION 3. AMENDMENT. Section 54-21-18 of 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.

Except as otherwise provided by law, the director 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, 44-08-18, and 54-21-17.1, 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 6, 2005

Filed April 6, 2005

CHAPTER 491

SENATE BILL NO. 2325

(Senators Kringstad, Lyson, Robinson)
(Representatives Charging, Williams)

MANUFACTURED HOME INSTALLATION

AN ACT to amend and reenact section 54-21.3-08 of the North Dakota Century Code, relating to installation of manufactured homes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-21.3-08 of the North Dakota Century Code is amended and reenacted as follows:

54-21.3-08. Adoption of an installation program - Penalty. The department of commerce shall adopt rules establishing a manufactured home installation program for all manufactured homes built in accordance with the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.]. The rules must establish minimum installation standards. ~~If required by federal law, the~~ The rules may include standards, fees, and requirements for licensing certification and training of installers, inspections of installations, dispute resolution, ~~and~~ penalties for noncompliance, and costs of processing complaints. The standards do not apply to manufactured homes installed before the original effective date of the rules. ~~Unless otherwise required by federal law, the standards regarding foundations do not apply to a manufactured home to be installed in a mobile home park if the mobile home park was in existence before the original effective date of the rules and if the manufactured home is installed pursuant to the manufacturer's instructions.~~ Manufactured homes may be installed in accordance with either standards adopted in the rules or the manufacturer's instructions. The rules must include provisions for the enforcement of these standards. Any person who violates this section or any rule adopted under this section is guilty of a class A misdemeanor.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 492**HOUSE BILL NO. 1079**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

STATE AID TO PUBLIC LIBRARIES

AN ACT to amend and reenact section 54-24.2-06 of the North Dakota Century Code, relating to state aid to public libraries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-24.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-24.2-06. Use of funds - Reporting. Funds appropriated under this chapter may be expended by public libraries for the purchase of library materials, supplies and equipment, salaries of library staff, and services. No funds may be used for land acquisition, construction, or investment.

Each public library receiving funds under the chapter shall submit to the state library an annual report detailing the expenditures of these funds and all other funds expended by the library within the ~~fiscal~~ calendar year. Such report is due within ninety days after the close of the ~~fiscal~~ calendar year.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 493

HOUSE BILL NO. 1080

(Education Committee)

(At the request of the Superintendent of Public Instruction)

LIBRARY COORDINATING COUNCIL MEMBERS AND DUTIES

AN ACT to amend and reenact sections 54-24.4-01 and 54-24.4-05 of the North Dakota Century Code, relating to the North Dakota library coordinating council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-24.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-24.4-01. North Dakota library coordinating council - Members - Term.

The North Dakota library coordinating council consists of eleven 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 nine 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 two citizens at large. All appointed members, except citizens at large, must be practicing librarians. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. 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.

SECTION 2. AMENDMENT. Section 54-24.4-05 of the North Dakota Century Code is amended and reenacted as follows:

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 online library catalog, generate promote 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~~ and enriching library services service in the state.
6. ~~Strengthen and support regional library cooperatives in~~ Support and strengthen library cooperative ventures, including consortia, regional associations, and partnerships, in their role of 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. Promote equitable access to information resources and library services to persons throughout the state.~~
8. ~~Support literacy projects for all ages.~~ Promote the services of libraries and librarians.
9. ~~Facilitate the coordination of statewide library services.~~
40. Take action necessary to carry out chapter 54-24.3 and this chapter.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 494

HOUSE BILL NO. 1085

(Political Subdivisions Committee)

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

COUNTY TREASURER TAX TRANSMITTAL

AN ACT to amend and reenact section 54-27-04 of the North Dakota Century Code, relating to transmission of state taxes by county treasurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-04 of the North Dakota Century Code is amended and reenacted as follows:

54-27-04. County treasurers to transmit state taxes collected and to furnish office of management and budget monthly statements of taxes collected. The county treasurer, as an agent of the state, shall, on or before the fifteenth of each month, transmit in full to the state treasurer all state taxes collected in the previous month together with a report thereon ~~in duplicate~~. The original of ~~said~~ report must be forwarded with the remittance to the state treasurer ~~and the duplicate thereof to the office of management and budget~~.

The state treasurer shall ~~forthwith~~ furnish a receipt to the county treasurer for the funds received, send a duplicate of the receipt to the county auditor, and cover ~~said~~ the amounts to the state taxes distribution fund.

The director of the office of management and budget, on or before the last day of same month shall, by drawing appropriate warrants on the state taxes distribution fund, transfer ~~such~~ the funds to the general fund and other funds in accordance with the purposes for which the taxes were levied and collected.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 495

SENATE BILL NO. 2080

(Finance and Taxation Committee)
(At the request of the State Treasurer)

HIGHWAY TAX DISTRIBUTION FUND ALLOCATION

AN ACT to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to allocation of the highway tax distribution fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities. A highway tax distribution fund is hereby created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. Any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. Sixty-three percent of such moneys must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Thirty-seven percent of such moneys must be allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county must be credited with the certificates of title of all motor vehicles registered by residents of such county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly ~~twenty-seven percent of the sums allocated to each county to the incorporated cities within such each county according to the formula in this subsection~~ on the basis of the per capita population of all of the incorporated cities situated within ~~such each~~ county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census. Provided, however, that in each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - a. ~~Twenty-seven~~ A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of

the counties under this subsection ~~must be the incorporated cities' share and must be~~ divided by the total population of all of the incorporated cities in the state ~~to determine the statewide per capita average.~~

- b. The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under subdivision a.
- c. The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under subdivision a.
- d. The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under subdivisions b and c for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota; provided, that any incorporated city may use such fund for the construction, reconstruction, repair, and maintenance of public highways within or outside such city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 496

HOUSE BILL NO. 1185 (Representatives Froseth, Ekstrom) (Senator Andrist)

RURAL GROWTH INCENTIVE GRANT PROGRAM EXTENSION

AN ACT to amend and reenact section 54-34.3-13 of the North Dakota Century Code, relating to continuation of the rural growth incentive grant program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.3-13 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-13. (~~Effective through July 31, 2005~~) Rural growth incentive program.

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. A rural growth incentive city may be eligible for a loan, grant, or both under this section.
2. The department shall designate an applicant city as a rural growth incentive city eligible for a loan if the city raises funds in the amount of a dollar-for-dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds used for loan matching funds may be any combination of public and private funds. If the department designates a city as a rural growth incentive city eligible for a loan under this section, subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this subsection. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this subsection, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding.
3. The department shall designate an applicant city as a rural growth incentive city eligible for a grant if the city raises funds in the amount of

a dollar-for-dollar match for the amount requested in the grant application and meets any additional program requirements provided by rule. The source of city funds used for grant matching funds may be any combination of public and private funds. If the department designates a city as a rural growth incentive city eligible for a grant under this section, subject to availability of funds, the state shall make a grant to the city in an amount not to exceed ten thousand dollars. The recipient rural growth incentive city shall use the grant money received to conduct a feasibility study for the location of a new business, including an expansion of a business with the primary place of business outside the rural growth incentive city. The business under this subsection is not limited to primary sector businesses. The funding source of the state grant is the North Dakota development fund. Total grants awarded by the department under this subsection may not exceed one hundred thousand dollars per biennium.

4. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city. The department shall provide the rural growth incentive city with training to assist the city in expanding primary sector businesses, locating new businesses, and working with state economic development programs.

(Effective after July 31, 2005) Rural growth incentive program.

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. The department shall designate an applicant city as a rural growth incentive city if the city raises funds in the amount of a dollar-for-dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. Subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this section. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this section, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city.

- b. ~~The department shall provide the city with training to assist the city in expanding primary sector businesses and working with state economic development programs.~~

Approved March 28, 2005

Filed March 28, 2005

CHAPTER 497

HOUSE BILL NO. 1528

(Representatives Metcalf, Boucher, Nottestad)

(Senators Dever, Lyson, Thane)

(Approved by the Delayed Bills Committee)

VETERANS' MEMORIAL INSPECTION

AN ACT to provide for inspection and repair recommendations for the veterans' memorial on the capitol grounds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative management committee - Inspection and recommendation on veterans' memorial. Before September 1, 2005, the legislative management committee of the legislative council shall visit and inspect the veterans' memorial on the capitol grounds and make recommendations for repairs and updates to the facility management division of the office of management and budget.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 498

HOUSE BILL NO. 1434

(Representatives R. Kelsch, Berg, Wall)
(Senators Cook, Freborg, Stenehjem)

NCLB ACCOUNTABILITY PLAN AND COMMITTEE

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to amendment of the state accountability plan under the No Child Left Behind Act; and to amend and reenact section 54-35-21 of the North Dakota Century Code, relating to the interim no child left behind committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

State accountability plan - Legislative review. Before the superintendent of public instruction may submit to the United States secretary of education any proposed changes in the state accountability plan required under the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301, et seq.], the superintendent shall present the proposed changes to the interim no child left behind committee. The committee shall review the proposed changes; accept testimony and documentary evidence regarding the impact of the proposed changes on the students, schools, school districts, and taxpayers of this state; and provide advice and recommendations regarding the proposed changes to the superintendent.

SECTION 2. AMENDMENT. Section 54-35-21 of the North Dakota Century Code is amended and reenacted as follows:

54-35-21. No Child Left Behind Act of 2001 - ~~Select~~ Interim committee - Appointment - Duties.

1. The legislative council shall appoint a ~~select~~ an interim committee consisting of five members of the senate and six members of the house of representatives ~~for the purpose of investigating the adoption of. The committee shall study~~ the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.], ~~its rationale, the promulgation of any including amendments to the Act, changes to federal regulations implementing the No Child Left Behind Act of 2001, the direct and indirect impact of the Act and its regulations on the school districts of this state, and the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state Act, and any policy changes and letters of guidance issued by the United States secretary of education.~~
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative council committees, except ~~that~~ the committee ~~has the power to~~ may communicate directly with the United States secretary of

education, employees of the United States department of education, and any other federal officials, both elected and appointed, regarding implementation of the ~~No Child Left Behind Act of 2001~~.

4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 4 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules. The committee shall work with and encourage the testimony of public and private officials, including the superintendent of public instruction, the education standards and practices board, the state board of higher education, the North Dakota council of educational leaders, the North Dakota education association, the North Dakota school boards association, and the North Dakota Indian affairs commission. In addition, the committee shall actively seek the participation of students, parents, classroom teachers, school administrators, and other citizens of this state. The committee shall direct its efforts to ensuring that no child in this state is left behind and to further ensuring that no law or rule, be it federal or state, hinders or otherwise impedes the ability of this state's teachers, schools, and school districts to achieve this goal.
5. The committee shall report to the fifty-ninth its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative assembly if the committee determines the state is not in compliance with any requirement of the No Child Left Behind Act of 2001.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 499

HOUSE BILL NO. 1523

(Representatives Berg, N. Johnson)

(Senators Stenehjem, Klein, Mutch)

(Approved by the Delayed Bills Committee)

WORKERS' COMPENSATION REVIEW COMMITTEE

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to creation of a legislative council workers' compensation review committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation review committee.

1. During each interim, a legislative council interim workers' compensation review committee must be appointed as follows: two members of the senate appointed by the majority leader of the senate of the legislative assembly; one member of the senate appointed by the minority leader of the senate of the legislative assembly; two members of the house of representatives appointed by the majority leader of the house of representatives; and one member of the house of representatives appointed by the minority leader of the house of representatives. The chairman of the legislative council shall designate the chairman of the committee. The committee shall operate according to the laws and procedures governing the operation of other legislative council interim committees. The committee may recommend legislation relating to workers' compensation. The committee shall meet once each calendar quarter or less often if the committee chairman determines a meeting that quarter is not necessary because there are no claims to review.
2. The committee shall review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. A claim may not be reviewed by the committee unless the organization has issued a final determination and either the injured worker has exhausted the administrative and judicial appeals process or the period for appeal has expired. In order for the committee to review a claim, the injured worker must first sign a release of information for constituent authorization to allow the committee and legislative council staff to review the injured worker's workforce safety and insurance records and to allow the committee members and workforce safety insurance representatives to discuss the records in an interim committee hearing. Notwithstanding any open meeting requirements, except as otherwise provided under this section, the workforce safety and insurance records of an injured worker whose case is reviewed by the committee are confidential, however, pursuant to the constituent's authorization, information contained in the records

may be discussed by the committee members and workforce safety and insurance representatives in an interim committee hearing.

3. The committee shall accept testimony of an injured worker and of a representative designated by the injured worker. After the committee has received the testimony of the injured worker and the injured worker's representative, the committee shall request that the organization provide testimony.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 500

HOUSE BILL NO. 1524

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

TRIBAL AND STATE RELATIONS COMMITTEE

AN ACT to provide for a tribal and state relations committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Committee on tribal and state relations - Membership - Duties.

1. The committee on tribal and state relations is composed of seven members as follows:
 - a. The chairman of the legislative council or the chairman's designee;
 - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
 - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.
2. The chairman of the legislative council, or the chairman's designee, shall serve as chairman of the committee.
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
4. The committee shall conduct joint meetings with the native American tribal citizens' task force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative council.
5. The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided 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.

6. The native American tribal citizens' task force is composed of six members as follows:
 - a. The executive director of the Indian affairs commission, or the executive director's designee;
 - b. The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
 - c. The chairman of the Spirit Lake Tribe, or the chairman's designee;
 - d. The chairman of the Three Affiliated Tribes, or the chairman's designee;
 - e. The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
 - f. The chairman of the Sisseton-Wahpeton Sioux Tribe, or the chairman's designee.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 501

HOUSE BILL NO. 1473

(Representatives Glassheim, DeKrey)

(Senators Lyson, Triplett, Warner)

COMMISSION ON ALTERNATIVES TO INCARCERATION

AN ACT to provide for a commission on alternatives to incarceration; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Commission on alternatives to incarceration.

1. The commission on alternatives to incarceration is composed of:
 - a. Three members appointed by the governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
 - b. The attorney general or the attorney general's designee;
 - c. Two members appointed by the chief justice of the supreme court;
 - d. The director of the department of corrections and rehabilitation;
 - e. The director of the department of human services;
 - f. Two local law enforcement officers appointed by the attorney general;
 - g. One state's attorney appointed by the North Dakota state's attorney's association;
 - h. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives;
 - i. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate; and
 - j. One representative of the North Dakota association of counties appointed by the association of counties.
2. The chairman of the legislative council shall select the chairman and vice chairman of the commission from the legislative members of the commission.

3. The commission shall meet at the times and places as determined by the chairman. The legislative council shall provide staffing for the commission.
4. The commission shall study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. If the commission determines that consultant services are necessary to assist the commission in conducting its assigned studies, the commission may request funding for consultant services from the legislative council and other interested entities. The commission shall provide to the governor information and recommendations for the governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The commission shall report its findings and recommendations together with any legislation required to implement those recommendations to the legislative council.
5. The members of the commission who are not state employees or members of the legislative assembly are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in this subsection, the expenses of appointed members are to be paid by the legislative council. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency. The members of the commission who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at commission meetings at the rate provided 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 2. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2009, and after that date is ineffective.

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

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 502

HOUSE BILL NO. 1035

(Legislative Council)

(Government Performance and Accountability Committee)

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY SYSTEM

AN ACT to provide for a state government performance and accountability system pilot project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - GOVERNMENT PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT. The legislative council shall assign, to an interim committee, responsibility to establish a government performance and accountability system pilot project involving up to three executive branch agencies during the 2005-06 interim. The interim committee may include representatives of the office of management and budget and the state auditor's office. The legislative council shall report its findings and recommendations, along with any legislation necessary to implement its recommendations relating to the pilot project, to the sixtieth legislative assembly.

SECTION 2. GOVERNMENT PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT - GUIDELINES AND CRITERIA. Each executive branch agency selected for inclusion in the pilot project shall, with input from the legislative council's interim committee:

1. Prepare biennial goals and objectives and related performance measurement indicators for major programs of the agency or department. The performance measures must provide, to the extent possible, the data necessary to assess the performance of major activities of an agency, including a program's efficiency and effectiveness; and provide a comparison, to the extent appropriate, to other states' performance measures.
2. Establish, to the extent possible, a three-year to five-year strategic plan to guide its operations and activities. The strategic plan must include:
 - a. The mission, goals, and objectives of the agency or department.
 - b. Identification of the groups of people served by the agency and the results of any methodology used to assess and improve services.
 - c. The strategies and activities utilized to meet agency or department goals and objectives.
 - d. A general description of the agency's or department's sources and uses of funds.
 - e. Estimated future service requirements and the resources that may be necessary to meet those requirements.

- f. External factors affecting services of the agency or department.
 - g. The performance measurement indicators developed under this Act used to evaluate and assess the agency's or department's performance.
- 3. Prepare, to the extent possible, a biennial performance report that summarizes its goals and objectives, compares performance results to performance targets, provides explanations of any major variances between performance results and targets, presents multiyear trends in performance results, and, to the extent possible, provides comparisons to other states' performance results and national benchmarks.

Approved May 4, 2005

Filed May 4, 2005

CHAPTER 503**HOUSE BILL NO. 1198**

(Representative Keiser)

REEMPLOYMENT PROCESS AND COST STUDY

AN ACT to provide for a legislative council study of reemployment processes and costs and an appropriate method for providing a limitation on the total average number of job-attached unemployment insurance claimants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. LEGISLATIVE COUNCIL STUDY - REEMPLOYMENT POLICIES, PRACTICES, AND COSTS AND MEANS OF LIMITING JOB-ATTACHED CLAIMANTS - REPORT.**

1. During the 2005-06 interim, the legislative council, with the participation of job service North Dakota, shall study:
 - a. The costs and effectiveness of the current reemployment processes utilized by job service North Dakota and the appropriate methods for providing those services to a substantially greater number of claimants;
 - b. An appropriate method for limiting the number of job-attached claimants to those employees who are critical to the business processes of the employers that temporarily laid off those employees; and
 - c. An appropriate means of funding any additional costs that might be incurred as a result of implementation of the study's recommendations.
2. During the 2005-06 interim, job service North Dakota shall report to the legislative council on the progress of, and results from, the reemployment demonstration project to be carried out by job service North Dakota during the 2005-06 interim.
3. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 15, 2005
Filed March 16, 2005

CHAPTER 504

HOUSE BILL NO. 1260

(Representatives Carlson, Hawken, Timm, Wald)
(Senators Espegard, Kringstad)

PUBLIC IMPROVEMENT CONTRACT AND BID STUDY

AN ACT to provide for a legislative council study of public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall study public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 505**HOUSE BILL NO. 1370**

(Representatives Brandenburg, Boe, Headland, Nicholas)
(Senators Erbele, Warner)

RAILROAD FUEL SURCHARGE STUDY

AN ACT to provide for a legislative council study of railroad fuel surcharges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - RAILROAD FUEL SURCHARGES. The legislative council shall consider studying railroad fuel surcharges during the 2005-06 interim. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 506**HOUSE BILL NO. 1396**

(Representatives Ruby, Bellew, Brandenburg, Zaiser)
(Senators Andrist, Erbele)

DUI STUDY

AN ACT to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - DRIVING UNDER THE INFLUENCE OFFENSES. The legislative council shall consider studying, during the 2005-06 interim, driving under the influence, repeat offenses, prevention, enforcement, and penalties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 507**HOUSE BILL NO. 1453**

(Representative Maragos)

COAT OF ARMS USE AND EMBLEM STUDY

AN ACT to create and enact a new subsection to section 54-41-03 of the North Dakota Century Code, relating to authorized use of the coat of arms of the state; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-41-03 of the North Dakota Century Code is created and enacted as follows:

The legislative assembly.

SECTION 2. NORTH DAKOTA LEGISLATIVE ASSEMBLY EMBLEM - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of creating an emblem for the sole use of the North Dakota legislative assembly, members of the legislative assembly, and the legislative council. The legislative council shall report its findings and recommendations of designs and usage, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 508**HOUSE BILL NO. 1530**

(Representatives Berg, Drovdal, Kempenich, Norland, Rennerfeldt, Skarphol)
(Approved by the Delayed Bills Committee)

OIL AND GAS STRUCTURE STUDY

AN ACT to provide for a legislative council study of North Dakota's oil and gas tax structure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - OIL AND GAS TAX STRUCTURE - COMPARISON TO OTHER STATES - SIMPLIFICATION. The legislative council shall consider studying, during the 2005-06 interim, North Dakota's oil and gas tax structure, including comparison to the oil and gas tax structure of other producing states and consideration of the feasibility and desirability of simplification of North Dakota's oil and gas tax structure. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 509**SENATE BILL NO. 2113**

(Senators Lyson, Fischer)

(Representatives Ruby, Onstad)

NONRESIDENT HUNTER STUDY

AN ACT to provide for a legislative council study of hunting and fishing privileges for nonresidents and nonresidents who are former residents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. LEGISLATIVE COUNCIL - NONRESIDENT HUNTER STUDY.**

The legislative council shall consider studying, during the 2005-06 interim, issues related to hunting and fishing by nonresidents and nonresidents who are former residents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 21, 2005

Filed March 21, 2005

CHAPTER 510**SENATE BILL NO. 2115**

(Natural Resources Committee)

(At the request of the State Water Commission and State Engineer)

RESERVED WATER RIGHTS STUDY

AN ACT to provide for a legislative council study of the process to negotiate and quantify reserved water rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - RESERVED WATER RIGHTS. The legislative council shall consider studying, during the 2005-06 interim, the process to negotiate and quantify reserved water rights. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 511**SENATE BILL NO. 2160**

(Senators J. Lee, Warner)

(Representatives Ekstrom, Kreidt)

STATE BUILDING CODE STUDY

AN ACT to provide for a legislative council study of administration and enforcement of the state building code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. LEGISLATIVE COUNCIL STUDY - STATE BUILDING CODE.**

The legislative council shall consider studying, during the 2005-06 interim, the administration and enforcement of the state building code and its relationship to local standards and enforcement. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 512**SENATE BILL NO. 2171**

(Senators Holmberg, Brown, Fischer, J. Lee)
(Representative Svedjan)

ACUPUNCTURIST LICENSING STUDY

AN ACT to provide for a legislative council study of the licensing of acupuncturists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE LICENSING OF ACUPUNCTURISTS - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the licensure and regulation of acupuncturists practicing in the state, as well as the possibility of multistate joint licensure and regulation programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 513**SENATE BILL NO. 2215**

(Senator Mathern)

**PRIVATE SECTOR HEALTH INSURANCE POOL
STUDY**

AN ACT to provide for a legislative council study relating to private sector employers securing health insurance through health insurance pools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - PRIVATE SECTOR EMPLOYERS SECURING HEALTH INSURANCE THROUGH HEALTH INSURANCE POOLS. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of private sector employers and self-employed individuals securing health insurance for permanent and temporary employees or themselves through a health insurance pool. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 514

SENATE BILL NO. 2257

(Senators Trenbeath, Lyson, Traynor)
(Representatives Delmore, Hawken, Klemin)

BAD CHECK DIVERSION PROGRAM STUDY

AN ACT to provide for a legislative council study of the feasibility and desirability of creating a diversion program for people who have written bad checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - BAD CHECK DIVERSION PROGRAM. During the 2005-06 interim, the legislative council shall consider studying the feasibility and desirability of creating a diversion program for people who have written bad checks as an alternative to prosecution. In performing the study, the legislative council shall seek input from interested persons, including the judicial branch, state's attorneys, and the North Dakota trial lawyers association. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 515**SENATE BILL NO. 2268**

(Senators Krebsbach, O'Connell, Seymour)
(Representatives Ekstrom, Froseth, Kerzman)

WASTE RUBBER STUDY

AN ACT to provide for a legislative council study of waste rubber recycling and remediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - WASTE RUBBER RECYCLING AND REMEDIATION STUDY. The legislative council shall consider studying, during the 2005-06 interim, issues related to waste rubber recycling, abatement and remediation of waste rubber tire stockpiles, and the recovery of components of petroleum-based products. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 516**SENATE BILL NO. 2272**

(Senators Erbele, Klein, Taylor)
(Representatives Brandenburg, Froelich, Kempenich)

**AGRICULTURAL PROPERTY TAX AND INCOME TAX
CREDIT STUDIES**

AN ACT to provide for a legislative council study of circumstances in which property should cease to be considered agricultural property for property tax purposes and a legislative council study of transferability of income tax credits for installation of geothermal, solar, or wind energy devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL AGRICULTURAL PROPERTY STATUS FOR PROPERTY TAX PURPOSES STUDY. The legislative council shall consider studying, during the 2005-06 interim, circumstances in which property should cease to be considered agricultural property for property tax purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 2. LEGISLATIVE COUNCIL INCOME TAX CREDIT TRANSFERABILITY STUDY. The legislative council shall consider studying, during the 2005-06 interim, issues related to transferability of income tax credits for installation of geothermal, solar, or wind energy devices. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 517**SENATE BILL NO. 2372**

(Senators Lindaas, Andrist)
(Representatives Aarsvold, Price)

DESTRUCTIVE BEHAVIOR STUDY

AN ACT to provide for a legislative council study relating to efforts to discourage alcohol and drug abuse and tobacco use.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL COORDINATION OF EFFORTS TO DISCOURAGE DESTRUCTIVE BEHAVIOR STUDY. The legislative council shall study, during the 2005-06 interim, the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 518**SENATE BILL NO. 2390**

(Senators Heitkamp, Mathern)
(Representative Gullekson)

CITY DEVELOPMENT IMPACT FEES STUDY

AN ACT to provide for a legislative council study of city and county development impact fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - CITY DEVELOPMENT IMPACT FEES. The legislative council shall consider studying, during the 2005-06 interim, city and county development impact fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 519**SENATE BILL NO. 2393**

(Senators Cook, Stenehjem, Urlacher)

TAX EXEMPTIONS AND RATE REDUCTIONS STUDY

AN ACT to provide for a legislative council study of sales, use, and gross receipts tax exemptions and rate reductions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying sales, use, and gross receipts tax exemptions and reductions, with emphasis on those that are available for only certain purchasers, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state, benefits to the state economy from eliminating the exemption or rate reduction, benefits to the state economy of retaining the exemption or rate reduction, relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations, and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 520**SENATE BILL NO. 2404**

(Senators O'Connell, Robinson)
(Representatives Haas, Metcalf, Sitte, Wieland)

EDUCATION FUNDING STUDY

AN ACT to direct a study of education funding by the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. LEGISLATIVE COUNCIL STUDY OF EDUCATION FUNDING.**

1. The legislative council shall study enhanced funding for elementary and secondary education and methods, including sales tax, income tax, and tax exemptions, by which the state's reliance on property taxes to fund elementary and secondary education could be reduced.
2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 521

HOUSE BILL NO. 1081

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT - TRIBAL AGREEMENTS

AN ACT to amend and reenact sections 54-40.2-02, 54-40.2-03.1, and 54-40.2-03.2 of the North Dakota Century Code, relating to notification to the superintendent of public instruction regarding agreements contemplated between school districts and Indian tribes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-02. Authorization to enter agreements - General contents.

1. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes, in accordance with this chapter or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.
2. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements.
3. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district shall:
 - a. Provide written notice to the superintendent of public instruction that it is contemplating entering into an agreement under this chapter; and
 - b. Consider written recommendations that the superintendent makes regarding the agreement.
4. This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with a public agency, for which the tribal government is otherwise eligible under federal, state, or local law.

SECTION 2. AMENDMENT. Section 54-40.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-03.1. Agreement - Notice.

1. After the parties to an agreement have agreed to its contents, the ~~state~~ public agency involved shall publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the ~~state~~ public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the publication of the notice.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

SECTION 3. AMENDMENT. Section 54-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-03.2. Public hearing - Notice.

1. If the ~~state~~ public agency receives a request pursuant to section 54-40.2-03.1, the ~~state~~ public agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in any newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.
2. If the public agency contemplating entering into an agreement under this chapter is a school district, the school district must also provide the superintendent of public instruction a copy of the notice.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 522

SENATE BILL NO. 2035

(Legislative Council)
(Higher Education Committee)

UNIVERSITY SYSTEM BLOCK GRANT APPROPRIATIONS

AN ACT to amend and reenact sections 54-44.1-04 and 54-44.1-06 of the North Dakota Century Code, relating to budget requests and block grant appropriations for the North Dakota university system; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-04. (Effective through June 30, 2005 2007) Budget estimates of budget units filed with the office of the budget - Deadline. The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The budget estimates for the North Dakota university system must include block grants for the university system for a base funding component and for an initiative funding component for specific strategies or initiatives and a budget estimate for an asset funding component for renewal and replacement of physical plant assets at the institutions of higher education. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in the director's discretion may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director designates shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

(Effective after June 30, 2005 2007) Budget estimates of budget units filed with the office of the budget - Deadline. The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of

the board or commission of each budget unit for which a board or commission is constituted. The director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

SECTION 2. AMENDMENT. Section 54-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-06. (Effective through June 30, 2005 2007) Preparation of the budget data - Contents. The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
 - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
 - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.

4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act. The draft of the proposed appropriations act for the North Dakota university system must include block grants for a base funding appropriation and for an initiative funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets at the institutions of higher education.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the

current biennium and anticipated assets or services to be acquired in the next biennium.

9. Any other information as the director of the budget determines desirable or as is required by law.

(Effective after June 30, 2005 2007) Preparation of the budget data - Contents. The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
 - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
 - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on

any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

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

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 523

SENATE BILL NO. 2036

(Legislative Council)
(Higher Education Committee)

UNIVERSITY SYSTEM UNEXPENDED APPROPRIATION CANCELLATION

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to the cancellation of unexpended appropriations for the North Dakota university system; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁶ **SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through June 30, 2005 2007) Office of management and budget to cancel unexpended appropriations - When they may continue. Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

(Effective after June 30, 2005 2007) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall

²³⁶ Section 54-44.1-11 was also amended by section 6 of House Bill No. 1023, chapter 23, section 1 of House Bill No. 1177, chapter 540, and section 1 of Senate Bill No. 2121, chapter 524.

cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

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

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 524

SENATE BILL NO. 2121

(Appropriations Committee)

(At the request of the Department of Transportation)

ROADWAY MAINTENANCE UNEXPENDED APPROPRIATIONS

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to unexpended appropriations for roadway maintenance operations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁷ **SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the

²³⁷ Section 54-44.1-11 was also amended by section 6 of House Bill No. 1023, chapter 23, section 1 of House Bill No. 1177, chapter 540, and section 1 of Senate Bill No. 2036, chapter 523.

equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.

(Effective after June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.

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

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 525**HOUSE BILL NO. 1053**

(Representative Delzer)

BANK OF NORTH DAKOTA CONTINGENT TRANSFERS

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to contingent Bank of North Dakota transfers to the general fund.

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:

Bank of North Dakota transfers to the general fund - Restoration.

Notwithstanding section 54-27.2-02 and subject to the availability of funds in the general fund, at the end of the biennium the director of the budget shall return to the Bank of North Dakota any funds transferred from the Bank to the general fund in response to a projected shortfall of general fund revenues pursuant to a contingent authorization by the legislative assembly. The amount returned to the Bank as required by this section must be the amount of the contingent transfer or the unobligated balance of the general fund at the end of the biennium, whichever is less. For purposes of this section "at the end of the biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 526

SENATE BILL NO. 2075

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

PERSONNEL BOARD REPORT FILING

AN ACT to amend and reenact subsection 3 of section 54-44.3-07 of the North Dakota Century Code, relating to the filing of the personnel board's biennial report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 54-44.3-07 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Submit a biennial report as prescribed by section 54-06-04 of its~~ Ensure that the director includes the activities and the operation of this state's personnel system of the board in the office of management and budget's biennial report.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 527

HOUSE BILL NO. 1170

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

OMB COOPERATIVE PURCHASING

AN ACT to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to cooperative purchasing by the office of management and budget; and to amend and reenact sections 15.1-09-34, 54-44.4-02, and 54-44.4-05 of the North Dakota Century Code, relating to the office of management and budget's purchasing services and to competitive, limited competitive, noncompetitive, and negotiated purchases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.

- k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

SECTION 2. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Cooperative purchasing.

1. The office of management and budget shall purchase commodities or services 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.
2. The office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education shall make joint purchases of like commodities or services of high common usage when the office of management and budget and the state board of higher education determine it is in the best interest of the state.
3. The director of the office of management and budget or the director's designee may agree to purchase commodities or services under contracts entered into by the United States general services administration or contracts of other government entities if it is determined to be in the best interest of the state after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54-44.4-09.
4. The director of the office of management and budget or the director's designee may participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered into between the participants.
5. Cooperative purchasing may include open-ended contracts that are available to other government entities or nonprofit organizations established on behalf of public entities.
6. Before entering into a cooperative purchasing agreement under this section, the office of management and budget must determine that the contracts were awarded through full and open competition or source selection methods specified in section 54-44.4-05 and shall send notice to approved vendors of the office's intent to make a cooperative purchase in accordance with this chapter.

SECTION 3. 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, services, and other commodities. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

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 section 24-02-16.
5. Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when 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 when 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. Emergency purchases must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.
8. Commodities and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
9. Specified commodities and services as determined by written directive by the director of the office of management and budget.
10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget. ~~The office of management and budget shall purchase commodities or services 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, with the office of management and budget, shall make such joint~~

purchases of like commodities or services 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 commodities or services 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.

²³⁸ **SECTION 4. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated purchases - ~~Other government purchasing contracts~~ - Exempt records.

1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.
2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
 - a. The commodity or service is available from only one source.
 - b. ~~The commodity or service is available from another governmental entity's contract.~~
 - e. The commodity or service is to be purchased for experimentation or trial.

²³⁸ Section 54-44.4-05 was also amended by section 1 of House Bill No. 1341, chapter 528.

- ~~d.~~ c. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - ~~e.~~ d. Commodities are being purchased for over-the-counter resale.
 - ~~f.~~ e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.
 - ~~g.~~ f. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
 - ~~h.~~ g. A used commodity is advantageous to the state and the commodity is available only on short notice.
 - ~~i.~~ h. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
 - ~~j.~~ i. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
 - ~~k.~~ j. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.
3. ~~If the director of the office of management and budget determines it to be in the best interest of the state, the office of management and budget may agree to purchase according to contracts entered into by the United States general services administration or may enter into cooperative purchasing agreements with a cooperative purchasing group of other state governments.~~

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 528

HOUSE BILL NO. 1341

(Representatives Kasper, Dosch, Grande, Headland, Klein, Skarphol)

APPROVED VENDORS FOR STATE BIDS

AN ACT to amend and reenact subsection 2 of section 54-44.4-05 and subsection 1 of section 54-44.4-09 of the North Dakota Century Code, relating to purchasing contracts and approved vendors for state commodities and services contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁹ **SECTION 1. AMENDMENT.** Subsection 2 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. The notice must describe the needed commodity or service and the intended procurement method and must state that vendors are permitted to submit bids or proposals for contracts to be awarded under this section. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
 - a. The commodity or service is available from only one source.
 - b. The commodity or service is available from another governmental entity's contract.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of

²³⁹ Section 54-44.4-05 was also amended by section 4 of House Bill No. 1170, chapter 527.

management and budget which would justify the expense of a competitive bidding or competitive proposal process.

- h. A used commodity is advantageous to the state and the commodity is available only on short notice.
- i. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
- j. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
- k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.

²⁴⁰ **SECTION 2. AMENDMENT.** Subsection 1 of section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

- 1. The office of management and budget shall establish and maintain current lists of persons that desire to provide commodities or services to the state. Every person that desires to bid or submit a proposal on contracts for commodities or services awarded under this chapter must be an approved vendor in order to be placed on the bidders list. The office of management and budget or the purchasing agency shall use the list when issuing invitation for bids or request for proposals over the amount established for small purchases, except as otherwise provided in this section. The office of management and budget or the purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases.

Approved March 16, 2005

Filed March 17, 2005

²⁴⁰ Section 54-44.4-09 was also amended by section 2 of House Bill No. 1091, chapter 381, and section 18 of House Bill No. 1273, chapter 384.

CHAPTER 529

HOUSE BILL NO. 1092

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

RECYCLED PAPER PRODUCT PURCHASE

AN ACT to amend and reenact section 54-44.4-08 of the North Dakota Century Code, relating to the purchase of recycled paper products by state agencies and institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.4-08 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-08. Purchase of recycled paper products. The office of management and budget, and any state agency or institution that has authority to purchase products, shall ensure that ~~beginning July 1, 1993, at least ten~~ beginning July 1, 1993, at least twenty percent of the total volume of paper and paper products being purchased for state agencies and institutions contain at least twenty-five percent recycled material; ~~beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; and beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material.~~ The office of management and budget shall implement a methodology to track compliance with this section.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 530

SENATE BILL NO. 2201

(Senators Wardner, Lyson)
(Representatives Haas, Maragos)

COMMUNITY ACTION AGENCY BLOCK GRANTS

AN ACT to amend and reenact sections 54-44.5-01, 54-44.5-06, and 54-44.5-07 of the North Dakota Century Code, relating to federal block grants supporting community action agencies.

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.] or any federal law concerning a block grant program or other appropriate federal funding of social or community services, 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~~ law.
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; and
 - j. Engage in activities eligible for federal funding, including funding through a block grant for social or community services.
3. "Department" means the department of commerce.
 4. "Director" means the director of the division.
 5. "Division" means the department division of community services.

SECTION 2. AMENDMENT. Section 54-44.5-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-06. 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 that is consistent with federal law concerning community action agencies that are eligible to receive federal funding through a block grant or other appropriate federal sources for social or community services.~~ The board shall determine personnel, fiscal, and program policies and shall approve proposals of financial assistance and the disbursement of funds.

SECTION 3. AMENDMENT. Section 54-44.5-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-07. 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 or community 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 or any other block grant or other federal funding sources that may be appropriate.

2. The division shall distribute the federal community services block grant funds received under the federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] or any other block grant or other appropriate federal funding source and shall allocate the funds as follows, unless a different amount is mandated by federal law:
 - 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 division, 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] or any other block grant funds or other appropriate federal funding source, if it is consistent with federal law, based on that agency's poverty population relative to the state's total poverty population. The division 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 division as it relates to the community services block grant program.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 531

HOUSE BILL NO. 1069

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS ADMINISTRATION

AN ACT to create and enact a new section to chapter 39-03.1, a new section to chapter 54-52, a new section to chapter 54-52.1, a new subsection to section 54-52.6-02, and a new section to chapter 54-52.6 of the North Dakota Century Code, relating to military service retirement credit and temporary employee participation in the defined contribution retirement plan under the public employees retirement system and the acceptance and expenditure of funds by the retirement board for the uniform group insurance program from third parties; to amend and reenact section 39-03.1-10.1, subsection 9 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-28, and 39-03.1-30, subsection 11 of section 54-52-01, subsection 3 of section 54-52-05, section 54-52-06, subsections 9 and 10 of section 54-52-17, sections 54-52-17.4 and 54-52-28, subsection 3 of section 54-52.6-01, and section 54-52.6-13 of the North Dakota Century Code, relating to the purchase of service credit for qualified military service, highway patrol retirement options, compliance with Internal Revenue Code provisions, confidentiality of records, purchase of sick leave, eligibility for the law enforcement retirement plan, temporary employee participation in the defined contribution retirement plan, and retirement benefit options under the public employees retirement system; to repeal sections 54-52-19.2 and 54-52.6-09.3 of the North Dakota Century Code, relating to prior service credit under the public employees retirement system and retirement contributions for military service; to provide a continuing appropriation; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10.1. Refund and repurchase of contributions. Except as provided in ~~subsection 3~~ section 2 of this Act, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.
3. A member may elect to purchase qualified military service credit pursuant to the 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. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.

²⁴¹ **SECTION 3. AMENDMENT.** Subsection 9 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. A An actuarially equivalent joint and survivor one hundred percent option.
 - b. Life An actuarially equivalent life with five-year or ten-year or twenty-year certain options.
 - c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

²⁴¹ Section 39-03.1-11 was also amended by section 1 of House Bill No. 1070, chapter 533.

Unless a contributor requests that the contributor receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension, with a fifty percent option to the surviving spouse.

SECTION 4. AMENDMENT. Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-11.2. Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

²⁴² **SECTION 5. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-28. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The 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. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.

²⁴² Section 39-03.1-28 was also amended by section 14 of House Bill No. 1172, chapter 415.

8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.
11. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

SECTION 6. AMENDMENT. Section 39-03.1-30 of 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 or the member's employer 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~~ the required contribution 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 7. AMENDMENT. Subsection 11 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

²⁴³ **SECTION 8. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection ~~6~~ 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

SECTION 9. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to ~~subsection 5 of section 54-52-17.4~~ section 12 of this Act a lump sum, is subject to a

²⁴³ Section 54-52-05 was also amended by section 1 of House Bill No. 1266, chapter 532.

civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

²⁴⁴ **SECTION 10. AMENDMENT.** Subsections 9 and 10 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. Single life.
 - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.
 - c. An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
 - d. Life Actuarially equivalent life with five-year or ten-year or twenty-year certain options.
 - e. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other qualified eligible plans under rules adopted by the board for the purchase of additional service credit,

²⁴⁴ Section 54-52-17 was also amended by section 3 of House Bill No. 1070, chapter 533.

but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.

SECTION 11. AMENDMENT. Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.4. Purchase of additional credit.

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
 - a. Active prior employment in the armed forces of the United States, except as provided in ~~subsection 5~~ section 12 of this Act, for up to four years of credit.
 - b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.
 - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
 - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
 - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
 - f. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
 - a. Employer-approved leave of absence; or
 - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
 - a. Except as provided in ~~subsection 5~~ section 12 of this Act, for up to four years of credit for active employment in the armed forces of the United States.
 - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.

- c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges' retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.
5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3450; 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 salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. 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 the percentage required by section 54-52.1-03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit

~~being purchased. For credit before July 1, 1966, no contribution is required.~~

6. 5. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.
7. 6. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

SECTION 12. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.

SECTION 13. AMENDMENT. Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

54-52-28. Internal Revenue Code compliance. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2005, as it applies for governmental plans.

SECTION 14. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Acceptance and expenditure of third-party payments - Continuing appropriation. The board may receive moneys from third parties, including the federal government, pursuant to one or more federal programs. Any money received from a third party by the board is appropriated to the board on a continuing basis for the board's use in paying benefits, premiums, or administrative expenses under the uniform group insurance program.

SECTION 15. AMENDMENT. Subsection 3 of section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.

²⁴⁵ **SECTION 16.** A new subsection to section 54-52.6-02 of the North Dakota Century Code is created and enacted as follows:

A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 17. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service.

²⁴⁵ Section 54-52.6-02 was also amended by section 2 of House Bill No. 1266, chapter 532.

SECTION 18. AMENDMENT. Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.
3. A former participating member ~~or refund beneficiary~~ may elect one or a combination of several of the following methods of distribution of the accumulated balance:
 - a. A lump sum distribution to the recipient.
 - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
 - c. Periodic distributions, as authorized by the board.
 - d. No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or c. A beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance.

4. If the former participating member's vested account balance is less than five thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 19. REPEAL. Section 54-52-19.2 of the North Dakota Century Code is repealed.

SECTION 20. REPEAL. Section 54-52.6-09.3 of the North Dakota Century Code is repealed.

SECTION 21. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the

purpose of defraying the cost of paying military service retirement credit for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

AGENCY	GENERAL FUND	OTHER FUNDS
Office of management and budget	\$0	\$3,343
Judicial branch	3,144	0
Retirement and investment office	0	1,803
State department of health	5,920	10,738
Department of human services	7,614	0
Job service North Dakota	0	3,780
Highway patrol	3,824	0
Department of corrections and rehabilitation	29,778	3,053
Adjutant general	7,027	18,249
Game and fish department	0	1,932
Parks and recreation department	2,201	207
State water commission	0	2,512
Department of transportation	0	50,854
Total	\$59,508	\$96,471

SECTION 22. EFFECTIVE DATE. Sections 3 through 7, 10, 13 through 16, 18, and 19 become effective on August 1, 2005.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 532

HOUSE BILL NO. 1266

(Representatives R. Kelsch, L. Meier, Sitte)
(Senators Cook, O'Connell, Stenehjem)

PERS RETURN TO EMPLOYMENT

AN ACT to create and enact a new subsection to section 54-52.6-02 of the North Dakota Century Code, relating to returning to employment after retirement under the public employees retirement system defined contribution retirement plan; to amend and reenact subsection 1 of section 54-52-05 of the North Dakota Century Code, relating to returning to employment after retirement under the public employees retirement system defined benefit retirement plan; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁶ **SECTION 1. AMENDMENT.** Subsection 1 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.

²⁴⁷ **SECTION 2.** A new subsection to section 54-52.6-02 of the North Dakota Century Code is created and enacted as follows:

A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which

²⁴⁶ Section 54-52-05 was also amended by section 8 of House Bill No. 1069, chapter 531.

²⁴⁷ Section 54-52.6-02 was also amended by section 16 of House Bill No. 1069, chapter 531.

does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.

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

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 533

HOUSE BILL NO. 1070

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS SUPPLEMENTAL PAYMENTS AND FINAL AVERAGE SALARY

AN ACT to create and enact a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to supplemental payments to retirees under the highway patrolmen's retirement system and the public employees retirement system; and to amend and reenact subsection 2 of section 39-03.1-11 and subsection 2 of section 54-52-17 of the North Dakota Century Code, relating to calculation of final average salary under the highway patrolmen's retirement system and the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁸ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six ~~consecutive~~ months employed during the last one hundred twenty months of employment. For contributors who retire on or after July 1, 2009, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.

SECTION 2. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Supplemental retiree benefit payment. If the board determines that the fund has obtained a total return on investments of eleven and two-tenths percent or higher for the fiscal year ending June 30, 2005, or June 30, 2006, and that the fund has the necessary margin to pay for the benefit, the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. The payment must be made the January following the fiscal yearend. The board may only make one payment under this section.

²⁴⁸ Section 39-03.1-11 was also amended by section 3 of House Bill No. 1069, chapter 531.

²⁴⁹ **SECTION 3. AMENDMENT.** Subsection 2 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who retire on or after July 1, 2009, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Supplemental retiree benefit payment. If the board determines that the fund has obtained a total return on investments of eleven and two-tenths percent or higher for the fiscal year ending June 30, 2005, or June 30, 2006, and that the fund has the necessary margin to pay for the benefit, the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. The payment must be made the January following the fiscal yearend. The board may only make one payment to each retiree under this section.

Approved March 16, 2005
Filed March 17, 2005

²⁴⁹ Section 54-52-17 was also amended by section 10 of House Bill No. 1069, chapter 531.

CHAPTER 534

SENATE BILL NO. 2297

(Senator J. Lee)
(Representative Price)

CHILDREN'S SERVICES COORDINATING COMMITTEE FUNCTIONS

AN ACT to amend and reenact sections 54-56-03, 54-56-04, and 54-56-06 of the North Dakota Century Code, relating to the functions and duties of the children's services coordinating committee; to repeal section 54-56-07 of the North Dakota Century Code, relating to the operating fund balance of the children's services coordinating committee; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-56-03 of the North Dakota Century Code is amended and reenacted as follows:

54-56-03. Functions - Continuing appropriation.

1. The committee 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 primary prevention ideas and strategies and present those ideas and strategies to regional or tribal children's services coordinating committees.
- c. Accept funds, services, or other assistance from any source. Any funds received under this section are appropriated on a continuing basis to the committee for the purpose of furthering the objectives of the committee.

2. The committee shall:

- a- ~~Distribute funds due to regional or tribal committees within five days of receiving the funds.~~
- b- ~~Distribute~~ 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 2. AMENDMENT. Section 54-56-04 of 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 designate up to twelve organizations to serve as regional and tribal children's services coordinating committees ~~to distribute grants received from the children's services coordinating committee.~~ The committee shall prescribe conditions for the creation, continuance, and duration of those 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 3. AMENDMENT. Section 54-56-06 of the North Dakota Century Code is amended and reenacted as follows:

54-56-06. Regional or tribal children's services coordinating committee - Functions - Continuing appropriation. A regional or tribal children's services coordinating committee, if established, must be composed of community volunteers and must maintain its own records and may accept funds, services, or other assistance from any source. Any funds received under this section are appropriated on a continuing basis to the regional or tribal committee for the purpose of furthering the objectives of the committee. ~~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 fifty 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 at the end of each fiscal year.

SECTION 4. REPEAL. Section 54-56-07 of the North Dakota Century Code is repealed.

SECTION 5. EXPIRATION DATE. Sections 1 through 3 of this Act are effective through June 30, 2007, and after that date are ineffective.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 535

SENATE BILL NO. 2070

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

ADMINISTRATIVE LAW JUDGE QUALIFICATIONS

AN ACT to amend and reenact subsection 3 of section 54-57-01 of the North Dakota Century Code, relating to employment of administrative law judges who are not attorneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 536

HOUSE BILL NO. 1275

(Representatives Skarphol, Glasheim, Svedjan)
(Senators Andrist, Seymour, Wardner)

INFORMATION TECHNOLOGY PROJECT REPORTING

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to executive branch, legislative branch, and judicial branch reporting of information technology projects to the information technology advisory committee; and to amend and reenact section 54-59-07 of the North Dakota Century Code, relating to the state information technology advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-59-07 of the North Dakota Century Code is amended and reenacted as follows:

54-59-07. State information technology advisory committee. The state information technology advisory committee consists of the chief information officer; the commissioner of higher education or the commissioner's designee; the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's designee; two members of the legislative assembly appointed by the legislative council; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor. The appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. Additional members may be asked to participate at the request of the chairman. The department shall provide staff services to the committee. The members of the committee representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning and budgeting, services of the information technology department, and statewide information technology initiatives and policy and shall review reports on major information technology projects as required by this chapter.

SECTION 2. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Information technology projects - Reports.

1. An executive, legislative, or judicial branch agency, except for institutions under the control of the state board of higher education, shall report to the state information technology advisory committee according to guidelines developed by the department and reviewed by the state information technology advisory committee regarding the plan for and

status of any information technology project that is estimated to cost more than two hundred fifty thousand dollars.

2. During the life of the project, the agency shall notify the state information technology advisory committee if:

 - a. At a project milestone, the amount expended on project costs exceeds the planned budget for that milestone by twenty percent or more; or
 - b. At a project milestone, the project schedule extends beyond the planned schedule to attain that milestone by twenty percent or more.
3. A report under subsection 2 must specify corrective measures being undertaken to address any cost or time of completion issue. If the agency has not taken adequate corrective measures within ninety days after the report, the agency shall submit a report to the legislative council's information technology committee regarding the project.
4. Upon completion of the project, the agency shall notify the state information technology advisory committee if:

 - a. The budget for the project exceeded the original budget by twenty percent or more; or
 - b. The final project completion date extended beyond the original project scheduled completion date by twenty percent or more.

Approved April 20, 2005
Filed April 20, 2005

CHAPTER 537

HOUSE BILL NO. 1203

(Representatives Keiser, Carlson)

(Senators Espgaard, Flakoll)

BUSINESS INCENTIVES, AGREEMENTS, AND REPORTS

AN ACT relating to business incentives, agreements, and reports; to create and enact a new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code, relating to disclosure of customer information by the Bank of North Dakota; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁰ **SECTION 1.** A new subdivision to subsection 7 of section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

Recipient reports and grantor reports as required under sections 2 through 10 of this Act.

SECTION 2. Definitions. As used in sections 2 through 10 of this Act, unless the context otherwise requires:

1. "Benefit date" means the date on which the recipient receives the business incentive. If the business incentive involves the purchase, lease, or donation of physical equipment, the benefit date is the date when the recipient puts the equipment into service. If the business incentive is for improvements to property, the benefit date is the earlier of either when the improvements are finished for the entire project or when a business occupies the property. If a business occupies the property and the business incentive grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each subsequent business when that subsequent business first occupies the property.
2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more. Unless specifically provided otherwise, the term does not include:

²⁵⁰ Section 6-08.1-02 was also amended by section 1 of House Bill No. 1150, chapter 88.

- a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
 - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown, is made pursuant to the beginning entrepreneur loan guarantee program, or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.
 - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
 - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
 - e. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
 - f. Assistance for housing.
 - g. Assistance for pollution control or abatement.
 - h. Assistance for energy conservation.
 - i. Tax reductions resulting from conformity with federal tax law.
 - j. Benefits derived from regulation.
 - k. Indirect benefits derived from assistance to educational institutions.
 - l. Except for a center of excellence award under section 15-10-41, assistance for a collaboration between a North Dakota institution of higher education and a business.
 - m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
 - n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
 - o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
 - p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
3. "Compensation" means the value of an employee's:

- a. Earnings, including wages, salary, bonus, and commissions; and
- b. Benefits, including:
 - (1) Health, disability, life, and retirement benefits or insurance premium paid by the employer;
 - (2) An employee's share of payroll taxes paid by the employer; and
 - (3) Other fringe benefits such as housing allowance and transportation expenses.
- 4. "Department" means the department of commerce.
- 5. "Grantor" means the state or any political subdivision that directly or indirectly grants a business incentive to a recipient.
- 6. "Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.
- 7. "Public purpose" includes assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. Job retention is only a public purpose in cases in which job loss is specific and demonstrable.
- 8. "Recipient" means any individual or business entity that receives a business incentive.
- 9. "State" means any North Dakota state government agency that has the authority to directly or indirectly award business incentives.

SECTION 3. Scope - Public purpose - Notice.

- 1. The application of sections 2 through 10 of this Act is limited to business incentives provided by grantors to recipients, unless otherwise provided.
- 2. A grantor may not grant a business incentive to a recipient unless that business incentive meets a public purpose.
- 3. A state business incentive in the form of a direct cash transfer must be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.
- 4. A political subdivision business incentive in the form of a cash transfer of money may be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.

SECTION 4. Business incentive agreement.

1. A recipient must enter a business incentive agreement with each grantor of a business incentive. The grantor and the recipient shall sign the agreement.
2. If a business incentive benefits more than one recipient, the grantor shall assign a proportion of the business incentive to each recipient that signs a business incentive agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
3. A business incentive agreement must include:
 - a. A description of the business incentive, including the value of the business incentive, which may be the amount of the incentive, the fair market value of the property conveyed to the recipient, or the fair market value of other in-kind benefits provided to the recipient; the type of incentive; and the type of district if the incentive is tax increment financing.
 - b. A statement of the public purposes of the business incentive.
 - c. Goals for the business incentive. The goals must include the number of jobs to be created and the average compensation of the new jobs created. The information on average compensation must include identification of the average benefits and the average earnings to be provided by the employer on all jobs to be created or retained in association with the incentive. The job and average compensation goals may include separate goals for the number of part-time or full-time jobs to be created or, in cases in which potential job loss is specific and demonstrable, goals for the number of jobs to be retained. In addition to other specific goal timeframes, the job and average compensation goals must contain specific goals to be attained within two years of the benefit date.
 - d. A description of the financial obligation of the recipient if the goals are not met. This financial obligation must include an exception for any unmet goal that results from an act of God or terrorism.
 - e. A commitment by the recipient to continue operations in the jurisdiction in which the business incentive is used for five years or more after the benefit date.
 - f. The name and address of the parent company of the recipient, if any.
 - g. A list of all financial assistance by all grantors for the project.
 - h. The recipient's obligation if the recipient does not fulfill the business incentive agreement.

SECTION 5. Failure to meet goals - Modification of goals.

1. At a minimum, the financial obligation provision of a business incentive agreement must require a recipient that fails to meet business incentive agreement goals to pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals. A grantor may extend for up to

one year the period for meeting the business incentive agreement goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals. A grantor may extend the period for meeting business incentive agreement goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report. Notwithstanding the five-year commitment in the business incentive agreement, a grantor may authorize a recipient to move from the jurisdiction in which the business incentive is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. If after extending the period for achieving the goals of the business incentive agreement for two years a grantor determines that a business incentive agreement goal of creation or retention of jobs has changed and justifies a decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a lesser number or to zero and may adjust the average compensation goals to reflect changed circumstances. Justification for decreasing job goals may include that other public benefits adequately offset the failure to meet the initial job goals.

2. A recipient that fails to meet the terms of a business incentive agreement may not receive a business incentive from any grantor for a period of five years from the date of failure or until a recipient satisfies the repayment obligation under this section, whichever occurs first. For purposes of this subsection, if the recipient is an individual, the disqualification attaches to the individual and if the recipient is a business entity, the disqualification attaches to the business and to each owner or shareholder of twenty percent or more of the business.

SECTION 6. State grantor recipient reports.

1. The department shall create state grantor recipient report forms that include:
 - a. The name and address of the recipient;
 - b. The type, public purpose, and value of the business incentive;
 - c. The number of new jobs to be created or retained in association with the business incentive;
 - d. The average compensation of all jobs to be created or retained in association with the business incentive, including identification of the average benefits and the average earnings provided by the employer on all jobs created or retained in association with the business incentive;
 - e. The date the job and average compensation goals are expected to be reached;
 - f. A statement of goals identified in the business incentive agreement and an update on achievement of these goals, including the actual number of jobs created or retained and the average compensation of jobs created or retained at that point, including identification of the average benefits actually provided and the average earnings actually provided by the employer on all jobs created or retained;

- g. The location of the recipient prior to receiving the business incentive;
 - h. The name and address of the parent corporation of the recipient, if any;
 - i. A list of business incentives by all grantors for the project; and
 - j. Other information the department and grantor may request.
2. Each state grantor shall use recipient report forms created by the department to monitor the progress by each state grantor recipient in achieving business incentive agreement goals. At a minimum, each of these recipients shall provide the state grantor with an annual recipient report for two years following the benefit date or until the goals are met, whichever is later. If the business incentive agreement goals are not met, the state grantor recipient shall continue to provide recipient reports to the state grantor until the incentive is repaid. A state grantor shall file with the department a copy of each completed recipient report.
3. Before March 1, 2007, and each March first thereafter, a state grantor recipient shall file with the state grantor the recipient report for the previous calendar year. If a state grantor recipient fails to file a recipient report before March eighth, the state grantor shall mail the recipient a warning letter. If a noncompliant state grantor recipient fails to file the recipient report within fourteen days of the postmarked date of the warning letter, the recipient shall pay to the state grantor a penalty of one hundred dollars for each subsequent day until the report is filed. The maximum penalty under this section may not exceed one thousand dollars.

SECTION 7. State grantor reports. Before April 1, 2007, and each April first thereafter, each state agency that has granted a business incentive within the last five calendar years shall file an annual state grantor report with the department. The department shall create the state grantor report form required under this section. A state grantor report must include a list of all recipients, each recipient's business incentive agreement goals, and a report on each recipient's progress toward the goals. If the department does not receive a state grantor report before May first, the department shall issue a warning letter to the noncompliant grantor. If the department has not received a state grantor report from the noncompliant grantor before June first, that noncompliant grantor may not award any business incentive until the past-due grantor report is filed with the department.

SECTION 8. Compilation and summary - Report to legislative council.

1. Beginning in 2007 and annually thereafter, the department shall publish a compilation and summary of the results of the state grantor reports for the previous calendar year. Beginning in 2007 and annually thereafter, the department of commerce shall file the reports of the state grantors and the compilation and summary with the legislative council. The department shall organize the compilation and summary so that useful comparisons across time periods and across grantors can be made. The department may add other information to the compilation and summary as deemed necessary to evaluate business incentives.
2. The compilation and summary must include:

- a. The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.
- b. The number of jobs achieved in comparison to the jobs targeted for each business year by year.
- c. The average compensation of jobs targeted to be created or retained by each recipient that year, including identification of the average benefits and average earnings to be provided by the employer for these jobs.
- d. The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.
- e. A distribution of business incentives by type of business and by public purpose.
- f. The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
- g. The percentage of business incentives that did not meet goals and that did not receive repayment.

SECTION 9. Political subdivision grantor annual reports.

1. A political subdivision shall maintain records of business incentives provided to recipients.
2. Before April 1, 2007, and each April first thereafter, each political subdivision that granted a business incentive during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
 - a. The names of the businesses receiving business incentives during that year;
 - b. The number of jobs expected to be created or retained by each business as a result of the business incentives;
 - c. The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs; and
 - d. The total dollar value of all business incentives provided by the political subdivision during that year.

SECTION 10. Appropriation requests. A state agency may not request an appropriation for the purpose of providing a business incentive in the form of a direct cash transfer unless the agency includes with the request a statement of the expected benefits associated with the direct cash transfer.

SECTION 11. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT BY SCHOOL DISTRICT TAX ABATEMENTS. The legislative

council shall consider studying, during the 2005-06 interim, the current system under which property taxes levied by school districts are abated for the purpose of furthering economic development and whether this practice of abating property taxes levied by school districts should continue to be a part of economic development efforts in this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 12. LEGISLATIVE COUNCIL STUDY - LOCAL ECONOMIC DEVELOPERS SYSTEM. The legislative council shall consider studying, during the 2005-06 interim, the system of local economic developers to determine whether the existing system provides the most effective and efficient system; whether the system could be improved by providing for increased uniformity in the provision of local economic development services or uniform applications, project investment standards, and economic development authority governance; and whether there are undesirable gaps or duplications in local economic development services, particularly in rural communities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 13. EFFECTIVE DATE. Sections 1 through 10 of this Act become effective on January 1, 2006.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 538

SENATE BILL NO. 2027

(Legislative Council)
(Criminal Justice Committee)

LEGAL COUNCIL FOR INDIGENTS COMMISSION

AN ACT to establish the commission on legal counsel for indigents for the purpose of providing indigent defense services; to amend and reenact section 27-20-49, subsection 2 of section 28-32-01, and subsections 1 and 4 of section 29-07-01.1 of the North Dakota Century Code, relating to the commission; to provide for a report to the legislative council; to provide an appropriation; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Commission on legal counsel for indigents - Membership.

1. The commission on legal counsel for indigents is established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for those individuals determined by the court to be eligible for and in need of those services.
2. The commission consists of the following members:
 - a. Two members appointed by the governor, one of whom must be appointed from a county with a population of not more than ten thousand.
 - b. Two members of the legislative assembly, one from each house, appointed by the chairman of the legislative council.
 - c. Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand.
 - d. One member appointed by the board of governors of the state bar association of North Dakota.
3. Appointing authorities shall make their initial appointments to the commission before August 1, 2005.
4. Initially, as determined by lot, one member will serve for one year, three members will serve for two years, and three members will serve for three years. At the expiration of the initial terms, the appointing authorities designated in subsection 2 shall make appointments for three-year terms. A member may not serve more than two consecutive three-year terms plus any initial term of less than three years.

5. Individuals appointed to the commission should have experience in the defense of criminal cases or other cases in which appointed counsel services are required or should have demonstrated a commitment to quality representation in indigent defense matters. Membership of the commission may not include any individual, or the employee of that individual, who is actively serving as a judge, state's attorney, assistant state's attorney, contract counsel or public defender, or law enforcement officer.
6. A member of the commission is entitled to reimbursement for travel and expenses as provided by law for other state officers. If not otherwise employed by the state of North Dakota, a member is entitled to receive per diem compensation of sixty-two dollars and fifty cents for each day devoted to attending meetings or performing other duties relating to the official business of the commission.
7. One of the two appointees of the chief justice, as determined by the chief justice, shall convene the commission's first meeting no later than August 15, 2005. The members of the commission shall select the chairman of the commission within thirty days after the commission's first meeting and annually thereafter.

SECTION 2. Commission responsibilities.

1. The commission shall:
 - a. Develop standards governing the delivery of indigent defense services, including:
 - (1) Standards governing eligibility for indigent defense services;
 - (2) Standards for maintaining and operating regional public defender offices if established;
 - (3) Standards prescribing minimum experience, training, and other qualifications for contract counsel and public defenders;
 - (4) Standards for contract counsel and public defender caseloads;
 - (5) Standards for the evaluation of contract counsel and public defenders;
 - (6) Standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest;
 - (7) Standards for the reimbursement of expenses incurred by contract counsel; and
 - (8) Other standards considered necessary and appropriate to ensure the delivery of adequate indigent defense services.
 - b. Establish and implement a process of contracting for legal counsel services for indigents.

- c. Establish public defender offices in the regions of the state as the commission considers necessary and appropriate.
 - d. Establish a method for accurately tracking and monitoring caseloads of contract counsel and public defenders.
 - e. Approve and submit a biennial budget request to the office of the budget.
- 2. Upon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund.
- 3. The commission shall adopt rules for the exercise of its authority under this chapter in a manner generally consistent with the notice and comment provisions of section 28-32-11.

SECTION 3. Commission director - Responsibilities.

- 1. The commission shall appoint a director who must be chosen on the basis of training, experience, and other qualifications considered appropriate. The director must be an attorney licensed and eligible to practice law in this state at the time of appointment and at all times during service as director. The director may be removed for cause by a majority vote of commission members.
- 2. The director shall:
 - a. Assist the commission in developing standards for the delivery of adequate indigent defense services;
 - b. Administer and coordinate delivery of indigent defense services and supervise compliance with commission standards;
 - c. Recommend the establishment of public defender offices when considered necessary and appropriate to the delivery of adequate indigent defense services;
 - d. Conduct regular training programs for contract counsel and public defenders;
 - e. Subject to policies and procedures established by the commission, hire the professional, technical, and support personnel, including attorneys to serve as public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
 - f. Prepare and submit to the commission a proposed biennial budget for the provision of indigent defense services; an annual report containing pertinent data on the operation, needs, and costs of the indigent defense contract system and any established public defender offices; and any other information as the commission may require;

- g. Submit the annual report required under subdivision f to the legislative council; and
- h. Perform other duties as the commission may assign.

SECTION 4. Records, files, and information - Accessibility - Confidentiality. Any file, record, or information regarding representation of a defendant under sections 1 through 3 of this Act which are attorney work-product or otherwise subject to any attorney-client privilege are confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission.

SECTION 5. AMENDMENT. Section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

27-20-49. Costs and expenses for care of child.

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:
 - a. The cost of medical and other examinations and treatment of a child ordered by the court.
 - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent.
 - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. ~~The supreme court~~ the commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and ~~the supreme court shall pay~~ reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

²⁵¹ **SECTION 6. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

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, 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 must 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 made under section 32-12.2-14, 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 classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - 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 commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology 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, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
 - m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

²⁵¹ Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 13 of House Bill No. 1088, chapter 195, and section 29 of Senate Bill No. 2074, chapter 89.

- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- 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.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- w. The commission on legal counsel for indigents.

²⁵² **SECTION 7. AMENDMENT.** Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers appointed to represent indigent persons must be compensated at a reasonable rate to be determined by the ~~court~~ commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person, when approved by the judge, must be paid by the state if the action is prosecuted in district court and by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by appointed counsel, or for whom appointed counsel without a request is considered appropriate by the court, shall submit an application for appointed defense services. For an application for appointed defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection

²⁵² Section 29-07-01.1 was also amended by section 8 of Senate Bill No. 2027, chapter 538.

must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

²⁵³ **SECTION 8. AMENDMENT.** Subsection 4 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the judicial branch commission on legal counsel for indigents to be used in the administration of the indigent defense system ~~and the collection of indigent defense costs and expenses required to be reimbursed under this section.~~

SECTION 9. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the commission on legal counsel for indigents shall report periodically to the legislative council regarding the implementation of this Act. The commission shall present its first report to the legislative council before December 1, 2005.

SECTION 10. APPROPRIATION. Any moneys not expended by the supreme court for indigent defense services by December 31, 2005, are appropriated to the commission on legal counsel for indigents and must be transferred to the commission on January 1, 2006.

SECTION 11. TRANSITION. All contracts for indigent defense services awarded by the supreme court after June 30, 2005, must expire no later than December 31, 2005.

SECTION 12. EFFECTIVE DATE. Sections 5 and 7 of this Act become effective on January 1, 2006.

Approved April 7, 2005

Filed April 12, 2005

²⁵³ Section 29-07-01.1 was also amended by section 7 of Senate Bill No. 2027, chapter 538.

CHAPTER 539

SENATE BILL NO. 2349

(Senators Mathern, Erbele, Heitkamp)
(Representatives Kaldor, Kerzman, Wald)

FAITH-BASED INITIATIVES OFFICE AND COMMISSION

AN ACT to provide for an office of faith-based and community initiatives and an advisory commission on faith-based and community initiatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Office of faith-based and community initiatives established.

The office of faith-based and community initiatives is established within the governor's office. The office of faith-based and community initiatives has lead responsibility to establish policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and community organizations to the extent permitted by law. The governor shall designate a member of the governor's staff to serve as director of the office of faith-based and community initiatives. The governor may designate other members of the governor's staff to assist the director.

SECTION 2. Functions. The principal functions of the office of faith-based and community initiatives are to:

1. Develop, lead, and coordinate the state's policy agenda affecting faith-based and community programs and initiatives; expand the role of those efforts in communities; and increase their capacity through executive action, legislation, federal and private funding, and regulatory relief;
2. Coordinate public education activities designed to mobilize public support for faith-based and community initiatives through volunteerism, special projects, demonstration pilots, and public and private partnerships;
3. Encourage private charitable giving to support faith-based and community initiatives;
4. Bring concerns, ideas, and policy options to the governor and legislative assembly for assisting, strengthening, and replicating successful faith-based and community programs;
5. Provide policy and legal education to state, local, and community policymakers and public officials seeking ways to empower faith-based and community organizations and to improve the opportunities, capacity, and expertise of those groups;
6. Develop and implement strategic initiatives to strengthen the institutions of civil society and the state's families and communities;

7. Encourage innovative grassroots, nonprofit organizations, and civic initiatives; and
8. Ensure that the efforts of faith-based and community organizations meet high standards of excellence and accountability.

SECTION 3. Advisory commission. The advisory commission on faith-based and community initiatives is composed of seven members to include the following: the executive director of the department of human services or the director's designee; the director of the department of corrections and rehabilitation or the director's designee; two members of the legislative assembly, one of whom must be selected by the members of the legislative council representing the majority faction and one of whom must be selected by the members of the legislative council representing the minority faction; and three public members appointed by the governor, one of whom must represent a minority population. The term of office for the public members is three years. Of the first public members appointed, one must be appointed for a term of one year, one must be appointed for a term of two years, and one must be appointed for a term of three years. No public member may be appointed to more than two consecutive terms. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the advisory commission each year. The advisory commission shall advise the director of the office of faith-based and community initiatives and the governor in the establishment of policy regarding matters affecting the faith-based and community organizations, including making recommendations to the governor concerning the future of existing state programs and initiatives. The advisory commission on faith-based and community initiatives shall report periodically to the governor and provide the governor with information and recommendations for the governor's consideration. The members of the advisory commission are entitled to mileage and expenses as provided by law for state officers and employees.

Approved March 25, 2005

Filed March 25, 2005

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 540

HOUSE BILL NO. 1177

(Representatives N. Johnson, Ekstrom)

(Senator Wardner)

HISTORICAL SOCIETY UNEXPENDED APPROPRIATIONS

AN ACT to amend and reenact sections 54-44.1-11 and 55-02-09 of the North Dakota Century Code, relating to the use of unexpended appropriations for the state historical society.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁴ **SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.

²⁵⁴ Section 54-44.1-11 was also amended by section 6 of House Bill No. 1023, chapter 23, section 1 of Senate Bill No. 2036, chapter 523, and section 1 of Senate Bill No. 2121, chapter 524.

4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

(Effective after June 30, 2005) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.

SECTION 2. AMENDMENT. Section 55-02-09 of the North Dakota Century Code is amended and reenacted as follows:

55-02-09. Historical impact emergency fund - Administration by director of state historical society - Emergency commission authorization. The director of the state historical society shall administer the historical impact emergency fund for the purpose of emergency mitigation of adverse effects on cultural resources and historical buildings, structures, or objects in the state. The director may use the moneys in the historical impact emergency fund only after the emergency commission has authorized the proposed use and expenditure. The historical impact emergency fund may receive moneys from unexpended appropriations for the state historical society, by legislative appropriation, and by gift, grant, devise, or bequest of any money or property to the fund. The historical impact emergency fund may not receive moneys from the state historical society's unexpended appropriations when the fund balance is greater than two hundred fifty thousand dollars. When the historical impact emergency fund balance is greater than two hundred fifty thousand dollars, any unexpended appropriations for the state historical society are canceled. The fund is not subject to section 54-44.1-11 and all income and moneys derived from the investment of the fund must be credited to the fund.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 541

SENATE BILL NO. 2207

(Senators Trenbeath, Klein, Robinson)
(Representatives Kretschmar, Monson)

HISTORICAL MARKER PROGRAM

AN ACT to amend and reenact section 55-10-12 of the North Dakota Century Code, relating to the historical marker program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-10-12 of the North Dakota Century Code is amended and reenacted as follows:

55-10-12. Authority to mark sites State historical marker program. The director of the state historical society may authorize, fund, and place state historical markers on any site listed in the state historic sites registry. This includes authority to negotiate with private property owners to mark privately owned sites but does not include agreements to pay private property owners compensation to mark the property develop and administer a historical marker program for the purpose of identifying local, state, and national points of interest in this state. The society shall authorize official markers to mark recognized sites and shall maintain an official historical markers' sites listing. All costs, including production, installation, and maintenance of a historical marker are the responsibility of the applicant or sponsor of the marker.

Approved March 9, 2005
Filed March 9, 2005

TAXATION

CHAPTER 542

HOUSE BILL NO. 1107

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TREASURY OFFSET PROGRAM PARTICIPATION

AN ACT to create and enact a new subsection to section 57-01-02 of the North Dakota Century Code, relating to participation by the tax commissioner in the treasury offset program; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-01-02 of the North Dakota Century Code is created and enacted as follows:

16. May participate in the treasury offset program administered by the United States department of treasury as prescribed by federal law and regulation. An amount equal to the amount of fees for participation in this program and any repayment of refunds erroneously received is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under this program and any required repayments.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 543**SENATE BILL NO. 2132**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

REFUND OF TAX BASED ON UNCONSTITUTIONALITY

AN ACT to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to refunds or credit of taxes based on a claim of unconstitutionality; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Claim of unconstitutionality - Refund or credit of taxes paid.

Notwithstanding any provision relating to claims for refund or credit of state taxes paid contained in title 57, any claim for a refund or credit of taxes paid based upon a claim that the tax or any provision thereof is unconstitutional under the federal or state constitution must be made within one hundred eighty days of the due date of the return or payment of the tax, whichever occurs first, for which the refund or credit is claimed. A claim for refund or credit of taxes paid before January 1, 2005, based upon a claim that the tax or any provision thereof is unconstitutional that is not filed with the commissioner before July 1, 2005, must be denied. This section does not apply to ad valorem property taxes.

SECTION 2. EFFECTIVE DATE. This Act is effective for tax returns filed or tax payments made after December 31, 2004.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 544

HOUSE BILL NO. 1517

(Representatives Vigesaa, Carlisle, Haas, Metcalf, Nicholas)
(Senator Syverson)

GREENHOUSES AS AGRICULTURAL PROPERTY

AN ACT to amend and reenact subsection 1 of section 57-02-01 and subdivision a of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to classification of greenhouse property as agricultural property for assessment purposes and property exempt from taxation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁵ **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. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. 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 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.

²⁵⁵ Section 57-02-01 was also amended by section 4 of House Bill No. 1175, chapter 545.

- g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. AMENDMENT. Subdivision a of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. All farm structures and improvements located on agricultural lands.
- (1) This subsection must be construed to exempt farm buildings and improvements only, and may 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.
- (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
- (3) Any structure or improvement used primarily 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. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
- ~~(3)~~ (4) The following factors may not be considered in application of the exemption under this subsection:
- (a) Whether the farmer grows or purchases feed for animals raised on the farm.
- (b) Whether animals being raised on the farm are owned by the farmer.
- (c) Whether the farm's replacement animals are produced on the farm.
- (d) Whether the farmer is engaged in contract feeding of animals on the farm.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

CHAPTER 545

HOUSE BILL NO. 1175

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

PROPERTY TAX LIENS

AN ACT to amend and reenact sections 11-13-12, 11-18-02, and 40-63-05, subsection 4 of section 57-02-01, subsection 3 of section 57-02-08.3, and sections 57-06-19, 57-12-09, 57-14-08, and 57-55-01 of the North Dakota Century Code, relating to liens noted in auditor's certificates on deeds and other instruments for the transfer of property, recording of certain instruments related to the transfer of property affected by liens, the status of property tax exemptions within renaissance zones, the definition of centrally assessed property, duties of recorders regarding property upon which liens have been created under the homestead credit for special exemptions, references to true and full value for ad valorem assessments, duties of special assessors to notify real estate owners when reassessing land and improved property, and the definition of utility services as applied to the taxation of mobile homes; to repeal sections 57-06-17 and 57-45-03 of the North Dakota Century Code, relating to the allocation of the assessment of operative property constituting a single and continuous property and the furnishing of lists of lands added to or taken from tax rolls; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-12 of the North Dakota Century Code is amended and reenacted as follows:

11-13-12. Auditor's certificate of taxes and special assessments on deeds, contracts for deed, plats, replats, and patents.

1. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are delinquent taxes ~~or~~, special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument, or whether the land has been sold for taxes.
- a. If there are delinquent taxes ~~or~~, special assessments, or an unsatisfied lien created under section 57-02-08.3 against lands described in the instrument, the auditor shall certify the same. When the receipt of the county treasurer is produced for the delinquent and current taxes or special assessments, the auditor shall enter "Taxes and special assessments paid and transfer accepted".
- b. If the land described has been sold for taxes to a purchaser other than the county, the auditor shall enter "Taxes paid by sale of the land described within and transfer accepted".
- c. If the instrument presented is entitled to record without regard to taxes, the auditor shall enter "Transfer accepted".

- d. Acceptances required under this subsection must be accompanied by the auditor's signature.
2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office whether there are current taxes or, current special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument. If there are current taxes or, current special assessments, or an unsatisfied lien created under section 57-02-08.3 against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of any current taxes or, current special assessments, or unsatisfied lien created under section 57-02-08.3. When the receipt of the county treasurer is produced showing payment of delinquent and current taxes and special assessments, and satisfaction of all liens created under section 57-02-08.3, if any, the auditor shall enter "Taxes and special assessments paid, all liens created under section 57-02-08.3 satisfied, if any, and transfer accepted". For purposes of this subsection:
- a. "Current special assessments" means special assessments that have been certified to the county auditor for collection but are not yet delinquent and have become due on the first day of January under section 57-20-01.
- b. "Current taxes" means real estate taxes, as shown on the most recent tax list prepared by the county auditor, which are not yet delinquent and have become due on the first day of January under section 57-20-01.
3. Whenever a plat, replat, auditor's lot, or any instrument that changes the current property description, including condominium ownership established under chapter 47-04.1, is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are current or delinquent taxes, special assessments, or an unsatisfied lien created under section 57-02-08.3 and, after February first of each year, the tax estimate for that year against the land described in the instrument or whether the land has been sold for taxes. If there are current taxes, delinquent taxes, delinquent special assessments, installments of special assessments, an unsatisfied lien created under section 57-02-08.3 or tax estimates against lands described in the instrument, the auditor shall certify the same.

SECTION 2. AMENDMENT. Section 11-18-02 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02. Recorder not to record certain instruments unless they bear auditor's certificate of transfer. Except as otherwise provided in section 11-18-03, the recorder shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments have been

paid by sale of the land, or that the instrument is entitled to record without regard to taxes. The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under section 57-02-08.3.

SECTION 3. AMENDMENT. Section 40-63-05 of the North Dakota Century Code is amended and reenacted as follows:

40-63-05. Property tax exemptions.

1. A municipality may grant a partial or complete exemption from ad valorem taxation on single-family residential property, exclusive of the land on which it is situated, if the property was purchased or rehabilitated by an individual for the individual's primary place of residence as a zone project. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition or completion of rehabilitation.
2. A municipality may grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements purchased or rehabilitated as a zone project for any business or investment purpose. An exemption under this subsection may not extend beyond five taxable years following the date of purchase or completion of rehabilitation.

²⁵⁶ **SECTION 4. AMENDMENT.** Subsection 4 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Centrally assessed property" means all property ~~except railroad operating property,~~ which is assessed by the state board of equalization ~~pursuant to under~~ chapters 57-05, 57-06, and 57-32.

SECTION 5. AMENDMENT. Subsection 3 of section 57-02-08.3 of 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 June first of the year for which the special assessment installment for which a credit is taken becomes payable, 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

²⁵⁶ Section 57-02-01 was also amended by section 1 of House Bill No. 1517, chapter 544.

cause a notice of lien of record to be filed against subject property with the recorder.

- (2) The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under this section, except for a transfer between spouses because of the death of one of them as provided in paragraph 3.
 - (3) 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.

SECTION 6. AMENDMENT. Section 57-06-19 of the North Dakota Century Code is amended and reenacted as follows:

57-06-19. Certification of assessment. The state tax commissioner shall certify to the county auditor of each county in which the company assessed owns property:

- 1- ~~The the total assessed true and full valuation of the company's property not constituting a single and continuous line, with information as to the amount in each assessment district within such the county.~~
- 2- ~~The number of miles [kilometers] of line, valuation per mile [1-64 kilometers], and total valuation of any property constituting a single and continuous line within each taxing district in each county.~~

SECTION 7. AMENDMENT. Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

57-12-09. Written notice of increased assessment to real estate owner.

When any assessor has increased the ~~assessed~~ true and full valuation of any lot or tract of land together with any improvements thereon by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered by ~~such~~ the assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no ~~such~~ notice need be delivered or mailed if the ~~assessed~~ true and full valuation is increased by less than ~~one thousand five hundred three thousand~~ one thousand five hundred dollars. The tax commissioner shall prescribe suitable forms for this notice and ~~such~~ the notice must ~~also~~ show the true and full value as defined by law of the property, including ~~such~~ improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. ~~Such~~ The notice must be mailed or delivered to the property owner at least ten days in advance of the meeting date of the local equalization board and must be mailed or delivered at the expense of the assessment district for which the assessor is employed.

SECTION 8. 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 a political subdivision, or by the governing body of that subdivision, requesting a reassessment of property in the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, before October first, may order a reassessment of any class of property, or of all property, located within the subdivision or within any subdivision if, in its opinion, taxable property located within 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 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. The special assessor is entitled to reasonable compensation by the board of county commissioners for 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 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, the commissioner shall appoint 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; the special assessor is entitled to reasonable compensation by the commissioner for that person's services 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, the compensation must be charged to the political subdivision in which the reassessment was made and must be deducted by the county treasurer from funds coming into the treasurer's hands apportionable to 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 for each of the assistants 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 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 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 board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from the commissioner's office to attend the meeting. The group of persons comprise the special board of equalization for the reassessment. The member representing the board of county commissioners serves as chairman and the county auditor serves as secretary for the special board of equalization. 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 the special meeting and its purpose 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 the meeting. Each person, except the tax commissioner or the commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of up to forty-five dollars per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at 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 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. When any special assessor has increased the true and full valuation of any lot or tract of land together with any improvements to that lot or tract of land by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered by the special assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no notice need be delivered or mailed if the true and full valuation is increased by less than three thousand dollars. The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the reassessment and must also show the date prescribed by law for the meeting of the special board of equalization of the assessment district in which the property is located. This notice must be mailed or delivered to the property owner at least ten days in advance of the meeting date of the special board of equalization and must be mailed or delivered at the expense of the assessment district for which the special assessor is employed.
5. At the meeting, the special board of equalization shall hear all grievances and complaints in regard to the reassessment and shall proceed to equalize the same. All tax lists must be corrected to comply with the action.

SECTION 9. AMENDMENT. Section 57-55-01 of the North Dakota Century Code is amended and reenacted as follows:

57-55-01. Definitions. For the purposes of this chapter, "mobile home" means a structure, either single or multisectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, owned or used as a residence or place of business of the owner or

occupant, which is either attached to utility services or is twenty-seven feet [8.23 meters] or more in length. For purposes of this chapter "utility services" means services purchased by the occupant from a utility company under the jurisdiction of the public service commission, a rural electric cooperative, or a political subdivision of the state.

SECTION 10. REPEAL. Sections 57-06-17 and 57-45-03 of the North Dakota Century Code are repealed.

SECTION 11. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 2004.

Approved March 23, 2005
Filed March 23, 2005

CHAPTER 546

SENATE BILL NO. 2157

(Senators Wardner, Lindaas, Syverson)
(Representatives Drovdal, Headland)

HOMESTEAD TAX CREDIT

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to eligibility for and application of the homestead property tax credit; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁷ **SECTION 1. AMENDMENT.** Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income Homestead credit.

1.
 - a. Any person sixty-five years of age or older ~~in the year in which the tax was levied, or any person who is permanently and totally disabled, in the year in which the tax was levied, as certified by a licensed physician approved by the local governing body, with an income of fourteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, that does not exceed the limitations of subdivision c is entitled to receive a reduction in the assessment on the taxable valuation on the person's homestead as defined in section 47-18-01, except that this.~~ An exemption under this subsection applies to any person who otherwise qualifies under this subsection regardless of whether the person is the head of a family.
 - b. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person.
 - c. The exemption ~~to which any person may be entitled~~ must be determined according to the following schedule:
 - a.
 - (1) If the person's income is not in excess of eight thousand five hundred dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a

²⁵⁷ Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2081, chapter 547.

maximum reduction of ~~two~~ three thousand thirty-eight dollars of taxable valuation.

- b- (2) If the person's income is in excess of eight thousand ~~five~~ hundred dollars and not in excess of ~~nine~~ ten thousand ~~five~~ hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~one~~ two thousand ~~six~~ four hundred thirty dollars of taxable valuation.
- e- (3) If the person's income is in excess of ~~nine~~ ten thousand ~~five~~ hundred dollars and not in excess of eleven thousand five hundred dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand ~~two~~ eight hundred twenty-three dollars of taxable valuation.
- e- (4) If the person's income is in excess of eleven thousand five hundred dollars and not in excess of ~~twelve~~ thirteen thousand ~~five~~ hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~eight~~ one thousand two hundred fifteen dollars of taxable valuation.
- e- (5) If the person's income is in excess of ~~twelve~~ thirteen thousand ~~five~~ hundred dollars and not in excess of fourteen thousand five hundred dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~four~~ six hundred eight dollars of taxable valuation.
- d. In no case may a husband and wife who are living Persons residing together both be, as spouses or when one or more is a dependent of another, are entitled to the credit as provided for in only one exemption between or among them under this subsection upon their homestead. The provisions of this Persons residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full exemption under this subsection equal to their ownership interests in the property.
- e. This subsection may does not reduce the liability of any person for special assessments levied upon any property.
- f. Any person eligible for claiming the exemption herein provided under this subsection shall sign a verified statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed fourteen thousand dollars per annum and that of facts establishing the person's eligibility.
- g. A person is ineligible for the exemption under this subsection if the value of the person's assets of the person and any dependent residing with the person, excluding the unencumbered value of the person's residence that the person claims as a "homestead" as

defined in section 47-18-01, does not exceed exceeds fifty thousand dollars, including the value of any assets divested within the last three years. The term "dependent" includes the spouse, if any, of the person claiming the exemption. For purposes of this subdivision, the unencumbered valuation of the homestead is limited to one hundred thousand dollars.

- h. The assessor shall attach the statement filed under subdivision f to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate
- i. An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.
2. a. Any person ~~sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a licensed physician approved by the local governing body, with an income of fourteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who would qualify for an exemption under subdivisions a and c of subsection 1 except for the fact that the person rents living quarters is eligible for refund for that part of a portion of the person's annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of the person's income.~~
- b. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. ~~In no case may a husband and wife~~
- c. ~~Persons who are living reside together both be entitled to the, as spouses or when one or more is a dependent of another, are entitled to only one refund as provided for in between or among them under this subsection. Persons who reside together in a rental unit, who are not spouses or dependents, are each entitled to apply for a refund based on the rent paid by that person.~~
- d. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund; ~~but the~~ The tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify refunds to the state treasurer ~~the amount of the refund due, if any, and the state~~

~~treasurer, who shall issue the refund refunds to applicants from the state general fund to the applicant. In no case may this~~

- e. This subsection does not apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared those living quarters are exempt from property taxation and the owner is not making a payment in lieu of property taxes.
 - f. A person may not receive a refund under this section for a taxable year in which that person received an exemption under subsection 1.
3. All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. The county directors of tax equalization shall make these forms available upon request.
4. ~~In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.~~
5. ~~No A person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may not receive any property tax credit under this section.~~
6. 5. For the purposes of this section, ~~"permanently:~~
- a. "Dependent" has the same meaning it has for federal income tax purposes.
 - b. "Homestead" has the same meaning as provided in section 47-18-01.
 - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
 - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
 - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically

determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the tax commissioner for the purpose of homestead tax credit reimbursement in addition to other funds available for that purpose, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004, for ad valorem property taxes and for taxable years beginning after December 31, 2005, for mobile home taxes.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 547

SENATE BILL NO. 2081

(Finance and Taxation Committee)
(At the request of the State Treasurer)

TAX REFUND PROCEDURES

AN ACT to amend and reenact subsection 2 of section 57-02-08.1 and subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to the procedures for the refund of certain taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁸ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a licensed physician approved by the local governing body, with an income of fourteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of the person's income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether ~~or not~~ expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall ~~certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant.~~ In no case may this subsection apply to rents or fees paid by

²⁵⁸ Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2157, chapter 546.

a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

SECTION 2. AMENDMENT. Subsection 3 of section 57-37.1-08 of the North Dakota Century Code is amended and reenacted as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment must be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid must bear interest at the Bank of North Dakota's money market demand account rate on the date of the tax commissioner's order to the state treasurer. Interest is to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the general fund appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 548

SENATE BILL NO. 2188

(Senators Cook, Fischer, Kringstad)
(Representatives N. Johnson, Svedjan, Timm)

AGRICULTURAL PROPERTY CAPITALIZATION RATE

AN ACT to amend and reenact subsection 4 of section 57-02-27.2 of the North Dakota Century Code, relating to the capitalization rate used for valuation and assessment of agricultural lands for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than ~~nine and one-half~~ eight and nine-tenths percent for taxable year 2005 and eight and three-tenths percent for taxable years after 2005. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 26, 2005

Filed April 27, 2005

CHAPTER 549**HOUSE BILL NO. 1333**

(Representatives Brandenburg, Boe, Nicholas, Weisz)
(Senators Erbele, Klein)

**RAILROAD ASSESSMENT INFORMATION
CONFIDENTIALITY**

AN ACT to amend and reenact section 57-05-11 of the North Dakota Century Code, relating to confidentiality of information relating to assessment of railroad property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-11 of the North Dakota Century Code is amended and reenacted as follows:

57-05-11. Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge or to make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any report, or to permit any report or copy or any book containing any abstract of particulars to be seen or examined by any person except as provided by law. Notwithstanding the provisions of this section, hearings held by the state board of equalization under chapter 57-05 or 57-13 must be open to the public under section 44-04-19. The commissioner may authorize examination of such reports by other state officers, and may furnish to the tax officials of another state, the multistate tax commission, or the United States any information contained in the reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect to an audit, provided that that information be furnished solely for tax purposes. The multistate tax commission may make that information available to the tax officials of any other state and the United States for tax purposes. This section applies only to a class II and class III railroad as defined by the surface transportation board in 49 Code of Federal Regulations, part 1201.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 550

HOUSE BILL NO. 1398

(Representatives Nelson, Metcalf, Wieland)
(Senators Lyson, Tallackson)

CORRECTIONS CENTERS MILL LEVY

AN ACT to amend and reenact section 57-15-06.6 and subsection 19.1 of section 57-15-06.7 of the North Dakota Century Code, relating to the county levy limitation for regional or county corrections centers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-06.6 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.6. Levy authorized for regional or county correction centers. The board of county commissioners of each county may levy an annual tax not exceeding the limitation in subsection 19.1 of section 57-15-06.7 for the purpose of constructing, equipping, operating, and maintaining regional or county corrections centers and for the purpose of contracting services from another public or private entity.

²⁵⁹ **SECTION 2. AMENDMENT.** Subsection 19.1 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

- 19.1. A county levying a tax for regional or county corrections centers according to section 57-15-06.6 may levy a tax not exceeding five ten mills.

Approved March 31, 2005
Filed March 31, 2005

²⁵⁹ Section 57-15-06.7 was also amended by section 1 of House Bill No. 1354, chapter 551.

CHAPTER 551**HOUSE BILL NO. 1354**

(Representatives Metcalf, D. Johnson, Mueller, Nicholas)
(Senators Andrist, Robinson)

VETERANS' SERVICE OFFICER MILL LEVY

AN ACT to amend and reenact subsection 18 of section 57-15-06.7 of the North Dakota Century Code, relating to the county levy for a county veterans' service officer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁰ **SECTION 1. AMENDMENT.** Subsection 18 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

18. A county levying a tax for a county veterans' service officer's salary, traveling, and office expenses in accordance with section 57-15-06.4 may levy a tax not exceeding ~~one and one-fourth~~ two mills.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 31, 2005

Filed March 31, 2005

²⁶⁰ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1398, chapter 550.

CHAPTER 552**HOUSE BILL NO. 1263**

(Representative Wall)

(Senator Thane)

**MERCURY AND HAZARDOUS SUBSTANCE REMOVAL
LEVY**

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to school district property tax levies for mercury and other hazardous substance abatement or removal; to provide for a transfer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶¹ **SECTION 1. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear ~~asbestos abatement - Lead paint mercury and hazardous substance abatement or removal - Required remodeling - Alternative education programs.~~

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of:
 - a. Providing funds for the ~~abatement or removal of asbestos or lead paint mercury and other hazardous substances from school buildings or the abatement of asbestos or lead paint substances in school buildings under any other~~ in accordance with any method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal of the abatement or removal of asbestos such substances;
 - b. Any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36;
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; and
 - d. Providing alternative education programs.

²⁶¹ Section 57-15-17.1 was also amended by section 1 of Senate Bill No. 2212, chapter 553.

2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 and 4, must be placed in a separate fund known as the ~~asbestos and lead paint abatement mercury and hazardous substance abatement or removal~~ fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of ~~asbestos or lead paint abatement mercury and hazardous substance abatement or removal~~.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. Any moneys remaining in the ~~asbestos and lead paint abatement mercury and hazardous substance abatement or removal~~ fund after completion of the principal and interest payments for any bonds issued for any school ~~asbestos or lead paint abatement mercury and hazardous substance abatement or removal~~ project, any funds remaining in the required remodeling fund after completion of the remodeling projects, and any funds remaining in the alternative education program fund at the termination of the program must be transferred to the general fund of the school district upon the order of the school board.

SECTION 2. EFFECTIVE DATE - TRANSFER. This Act is effective for taxable years beginning after December 31, 2004. Any funds in the asbestos and lead paint abatement fund after the effective date of this Act must be transferred to the mercury and hazardous substance abatement or removal fund, but any funds remain obligated for payment of principal and interest of any bonds for which the funds were obliged before the transfer.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 553

SENATE BILL NO. 2212

(Senators Grindberg, Schobinger, Wardner)
(Representatives Brandenburg, Grande, N. Johnson)

HEATING AND AIR SYSTEM LEVY

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to use of a school district tax levy for heating, ventilation, and air-conditioning systems; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶² **SECTION 1. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear asbestos abatement - Lead paint removal - Required remodeling - Alternative education programs - Heating, ventilation, and air-conditioning systems.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of:
 - a. Providing funds for the removal of asbestos or lead paint substances from school buildings or the abatement of asbestos or lead paint substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances;
 - b. Any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36;
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; ~~and~~
 - d. Providing alternative education programs; and
 - e. Providing funds for the repair, replacement, or modification of any heating, ventilation, or air-conditioning systems and required ancillary systems to provide proper indoor air quality that meets

²⁶² Section 57-15-17.1 was also amended by section 1 of House Bill No. 1263, chapter 552.

american society of heating, refrigerating and air-conditioning engineers, incorporated standards.

2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 ~~and~~ 4, and 5, must be placed in a separate fund known as the asbestos and lead paint abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos or lead paint abatement.
3. All revenue accruing from up to five mills of the fifteen-mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 2, 3, and 4, must be placed in a separate fund known as the heating, ventilation, and air-conditioning upgrade fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of improving indoor air quality.
6. Any moneys remaining in the asbestos and lead paint abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos or lead paint abatement project, any funds remaining in the required remodeling fund after completion of the remodeling projects, ~~and~~ any funds remaining in the alternative education program fund at the termination of the program, and any funds remaining in the heating, ventilation, and air-conditioning upgrade fund after completion of the principal and interest payments for any bonds issued for any indoor air quality project must be transferred to the general fund of the school district upon the order of the school board.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 554

HOUSE BILL NO. 1182

(Representatives Keiser, Delmore, Wieland)
(Senator J. Lee)

INSURANCE RESERVE FUND LEVY USE

AN ACT to amend and reenact subsection 2 of section 57-15-28.1 of the North Dakota Century Code, relating to use of political subdivision levies for insurance reserve funds for political subdivision workforce safety and insurance premiums; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶³ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A political subdivision, except a school district or park district, levying a tax for an insurance reserve fund according to section 32-12.1-08 may levy a tax not exceeding five mills. A political subdivision, except a school district or park district, may use all or part of the levy under this subsection and the insurance reserve fund for payment of workforce safety and insurance contributions, premiums, judgments, and claims of the political subdivision.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 9, 2005

Filed March 9, 2005

²⁶³ Section 57-15-28.1 was also amended by section 1 of Senate Bill No. 2065, chapter 555.

CHAPTER 555**SENATE BILL NO. 2065**

(Senators J. Lee, Warner)
(Representatives Wieland, Nicholas)

COUNTY HEALTH INSURANCE LEVY

AN ACT to amend and reenact subsection 6 of section 57-15-28.1 of the North Dakota Century Code, relating to county mill levy limitations for comprehensive health insurance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁴ **SECTION 1. AMENDMENT.** Subsection 6 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding ~~four~~ eight mills and the limitation in subsection 36 of section 57-15-06.7.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005
Filed March 14, 2005

²⁶⁴ Section 57-15-28.1 was also amended by section 1 of House Bill No. 1182, chapter 554.

CHAPTER 556**SENATE BILL NO. 2158**

(Senators Taylor, Espegard, Klein)
(Representatives Boe, Drovdal, N. Johnson)

RURAL LEADERSHIP TUITION TAX CREDIT

AN ACT to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for contributions made for tuition scholarships to rural leadership North Dakota; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

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 contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 557

SENATE BILL NO. 2362

(Senators Dever, Cook, Wardner)
(Representatives Carlisle, L. Meier, Thoreson)

MILITARY INCOME TAX DEDUCTION

AN ACT to amend and reenact subdivision u of subsection 1 of section 57-38-01.2 and subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax deduction for income of national guard and reserve volunteers for federal active duty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁵ **SECTION 1. AMENDMENT.** Subdivision u of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- u. Reduced by the amount received by the taxpayer as payment for services performed when ~~called or ordered to~~ mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. An individual claiming the reduction under this subdivision may not also claim the reduction under subdivision k for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education; ~~or active guard and reserve tours for which the member has volunteered.~~

²⁶⁶ **SECTION 2. AMENDMENT.** Subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- g. Reduced by the amount received by the taxpayer as payment for services performed when ~~called or ordered to~~ mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or

²⁶⁵ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 7 of Senate Bill No. 2032, chapter 151, and section 2 of Senate Bill No. 2391, chapter 560.

²⁶⁶ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

professional military education; or active guard and reserve tours
for which the member has volunteered.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved April 6, 2005

Filed April 6, 2005

CHAPTER 558

HOUSE BILL NO. 1474

(Representatives Kerzman, Gulleeson, L. Meier)
(Senators Dever, Kilzer)

ORGAN DONOR INCOME TAX DEDUCTION

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2 and a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual income tax deduction for expenses and lost wages incurred by an individual who makes a donation of a human organ; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁷ **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

- (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
- (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
- (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions, and not already deducted under subdivision e.

²⁶⁷ Section 57-38-01.2 was also amended by section 7 of Senate Bill No. 2032, chapter 151, section 1 of Senate Bill No. 2362, chapter 557, and section 2 of Senate Bill No. 2391, chapter 560.

²⁶⁸ **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

- (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
- (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
- (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005
Filed March 14, 2005

²⁶⁸ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

CHAPTER 559**HOUSE BILL NO. 1108**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

CORPORATE INCOME TAX ADJUSTMENTS

AN ACT to create and enact two new subdivisions to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to adjustments to federal taxable income for corporate income tax purposes; to amend and reenact subdivision e of subsection 1 of section 57-38-30 of the North Dakota Century Code, relating to the imposition and rate of tax on corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subdivisions to subsection 1 of section 57-38-01.3 of the North Dakota Century Code are created and enacted as follows:

Increased by the amount of the deduction allowable under section 199 of the Internal Revenue Code [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal taxable income.

For tax years 2005 and 2006, increased by the amount of extraterritorial income as defined in section 114 of the Internal Revenue Code [26 U.S.C. 114], that is excluded under sections 101(d), 101(e), and 101(f) of Pub. L. 108-357 [118 Stat. 1418], but only to the extent the income was excluded in determining federal taxable income.

SECTION 2. AMENDMENT. Subdivision e of subsection 1 of section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

- e. On all taxable income above thirty thousand dollars, at the rate of ~~seven~~ six and one-half percent.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable years beginning after December 31, 2004. Section 2 of this Act is effective for taxable years beginning after December 31, 2006.

Approved April 22, 2005

Filed April 25, 2005

CHAPTER 560

SENATE BILL NO. 2391

(Senators Syverson, Brown, Espegard, Grindberg, Nelson)
(Representative Iverson)

PLANNED GIFTS INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38, a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for individuals for planned gifts to qualified North Dakota nonprofit organizations; 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:

Planned gifts credit - Definitions. For purposes of this section:

1. a. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
 - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
 - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
 - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
 - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 - (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 - (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
 - (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

- b. "Qualified nonprofit organization" means a North Dakota incorporated or established organization that is:
 - (1) A tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and
 - (2) An organization that has an established business presence or situs in North Dakota.
- c.
 - (1) A contribution using a technique described in paragraph 1 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the North Dakota qualified nonprofit organization sooner than the earlier of:
 - (a) The date of death of the beneficiaries; or
 - (b) Five years from the date of the contribution.
 - (2) A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.
 - (3) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the North Dakota qualified nonprofit organization sooner than the earlier of:
 - (a) The date of death of the annuitant or annuitants; or
 - (b) Five years after the date of the contribution.
 - (4) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.
- 2. An individual taxpayer is allowed a tax credit against the taxes imposed by section 57-38-29 or 57-38-30.3 in an amount equal to twenty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to any North Dakota qualified nonprofit organization. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is five thousand dollars. The credit allowed under this section may not exceed the taxpayer's income tax liability.
 - a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in

computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.

- b. The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.

²⁶⁹ **SECTION 2.** A new subdivision to subsection 1 of section 57-38-01.2 is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

²⁷⁰ **SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

²⁷¹ **SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An individual taxpayer filing a return under this section is entitled to the credit provided under section 1 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004, and applies to qualifying planned gifts made after July 31, 2005.

Approved March 16, 2005

Filed March 17, 2005

²⁶⁹ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 7 of Senate Bill No. 2032, chapter 151, and section 1 of Senate Bill No. 2362, chapter 557.

²⁷⁰ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, and section 4 of Senate Bill No. 2391, chapter 560.

²⁷¹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, and section 3 of Senate Bill No. 2391, chapter 560.

CHAPTER 561

HOUSE BILL NO. 1145

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TAX FILING BY MARRIED INDIVIDUALS

AN ACT to amend and reenact subsection 1 of section 57-38-30.3 and subsection 2 of section 57-38-31 of the North Dakota Century Code, relating to the filing of separate income tax returns by married individuals; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection. ~~For a nonresident individual, estate, or trust, the tax is equal to the tax determined in accordance with the applicable schedule in subdivisions a through e multiplied by the fraction under subdivision f.~~

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:

Not over \$27,050

Over \$27,050 but not over \$65,550

Over \$65,550 but not over \$136,750

Over \$136,750 but not over \$297,350

Over \$297,350

The tax is equal to:

2.10%

\$568.05 plus 3.92% of amount over \$27,050

\$2,077.25 plus 4.34% of amount over \$65,550

\$5,167.33 plus 5.04% of amount over \$136,750

\$13,261.57 plus 5.54% of amount over \$297,350

²⁷² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1052, chapter 562, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

- f. ~~For a nonresident individual, estate, or trust, the tax determined under the applicable schedule in subdivisions a through e must be~~ For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the ~~individual's~~ individual's federal adjusted gross income ~~derived from North Dakota sources allocable and apportionable to this state; and~~
- (2) The denominator is the ~~individual's~~ individual's federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection ~~3~~ 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. ~~If married individuals who file a joint federal income tax return are required to file separate state income tax returns under any~~

~~provision of this chapter, the tax under this subsection for each spouse must be determined by applying the rates under subdivision b to the spouses' joint North Dakota taxable income and prorating the result between the spouses based on their separate North Dakota taxable incomes.~~

- h. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

SECTION 2. AMENDMENT. Subsection 2 of section 57-38-31 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 562

HOUSE BILL NO. 1052 (Representatives Maragos, Nicholas) (Senator Wardner)

CAPITAL GAINS INCOME TAX EXCLUSION

AN ACT to amend and reenact subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the exclusion for capital gains under the simplified method of computing individual income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷³ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
 - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the 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.
 - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

²⁷³ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1145, chapter 561, section 2 of House Bill No. 1474, chapter 558, section 10 of Senate Bill No. 2146, chapter 317, section 4 of Senate Bill No. 2217, chapter 94, section 2 of Senate Bill No. 2362, chapter 557, section 3 of Senate Bill No. 2391, chapter 560, and section 4 of Senate Bill No. 2391, chapter 560.

- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when called or ordered to title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 563

SENATE BILL NO. 2045

(Legislative Council)
(Taxation Committee)

PASSTHROUGH ENTITY COMPOSITE TAX RETURN

AN ACT to amend and reenact section 57-38-31.1 of the North Dakota Century Code, relating to filing of composite income tax returns by passthrough entities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-31.1. Composite returns. Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the aggregate of the shares of North Dakota income reportable to North Dakota by the partners or shareholders included in the composite return by five and fifty-four hundredths percent.

1. For purposes of this section, unless the context otherwise requires:
 - a. "Member" means an individual who is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust.
 - b. "Nonresident" means an individual who is not a resident of or domiciled in the state or a trust not organized in the state.
 - c. "Passthrough entity" means an entity that for the applicable tax year is treated as an S corporation under this chapter or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.
2. a. A passthrough entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax, at the highest marginal rate provided in section 57-38-30.3 for individuals, on the members' pro rata or distributive shares of income of the passthrough entity from doing business in, or deriving income from sources within, this state.

- b. A nonresident member whose only source of income within the state is from one or more passthrough entities may elect to be included in a composite return filed under this section.
 - c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the passthrough entity.
 - 3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.
 - b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.
 - c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
 - (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
 - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
 - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
 - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal

Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 564**HOUSE BILL NO. 1041**

(Legislative Council)
(Taxation Committee)

MILITARY NONRESIDENT INCOME TAX TREATMENT

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-40 of the North Dakota Century Code, relating to the filing period for a claim for credit or refund attributable to the Servicemembers Civil Relief Act by a nonresident member of the United States armed services; 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 subdivision to subsection 1 of section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

A claim for credit or refund of an overpayment of tax imposed by this chapter may be made under this subdivision if the overpayment is attributable to application to the taxpayer of section 511 of the Servicemembers Civil Relief Act [Pub. L. 108-189; 117 Stat. 2835; 50 U.S.C. 501 et seq.]. Notwithstanding the time period for filing claims prescribed in this subsection, if a claim for credit or refund under this subdivision is barred because the time period for filing prescribed under this subsection expired before August 1, 2005, the claim for credit or refund may be filed on or before April 15, 2006.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 2000, and before January 1, 2003, and is thereafter ineffective.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 565

HOUSE BILL NO. 1144

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

LOTTERY WINNINGS TAX WITHHOLDING

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to income tax withholding on lottery winnings; and to declare an emergency.

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:

Withholding of lottery winnings. The North Dakota lottery shall deduct and withhold five and fifty-four one-hundredths percent of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld, but is not liable to any person for the amount of the payment.

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

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 566

SENATE BILL NO. 2140

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

FINANCIAL INSTITUTIONS TAXATION

AN ACT to amend and reenact section 57-35.3-12, subsection 9 of section 57-38-38, and sections 57-38.1-01 and 57-38.1-02 of the North Dakota Century Code, relating to provisions of the corporate income tax applicable to the financial institutions tax, the time period for the assessment of additional income tax, the definition of financial organization for purposes of the Uniform Division of Income for Tax Purposes Act, and applicability of the Uniform Division of Income for Tax Purposes Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35.3-12 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-12. Applicable provisions of chapter 57-38 relating to administration, interest, and penalties. The provisions of subsection 9 of section 57-38-14, 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.

SECTION 2. AMENDMENT. Subsection 9 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

9. Except for an amended return required to be filed under section 57-38-34.4, if a person files an amended state income tax return within the time periods prescribed in subsections 1, 2, and 3 or ~~subsection~~ subsections 1 and 2 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections on the amended return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 3. AMENDMENT. Section 57-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.
4. ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.~~
5. "Nonbusiness income" means all income other than business income.
6. 5. "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.
7. 6. "Sales" means all gross receipts of the taxpayer not allocated under sections 57-38.1-04 through 57-38.1-08.
8. 7. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SECTION 4. AMENDMENT. Section 57-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-02. Taxpayers - Applicability. Any taxpayer having income from business activity which is taxable both within and without this state, including a public utility, ~~but other than activity as a financial organization or the rendering of purely personal service by an individual,~~ shall allocate and apportion the taxpayer's net income as provided in this chapter.

SECTION 5. EFFECTIVE DATE. Section 2 of this Act is effective for amended returns filed after December 31, 2004.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 567

SENATE BILL NO. 2103

(Finance and Taxation Committee)
(At the request of the Supreme Court)

INCOME TAX SETOFFS BY COURT ORDER

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 and sections 57-38.3-05 and 57-38.3-06 of the North Dakota Century Code, relating to definitions and procedures for purposes of income tax setoffs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, ~~or~~ a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 2. AMENDMENT. Section 57-38.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.3-05. Procedure - Notification of taxpayer.

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each debtor.
2. If a debtor identified by a claimant agency is determined by the commissioner to be entitled to a refund of at least twenty-five dollars, the commissioner shall approve the transfer of an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. When the refund owed exceeds the claimed debt, the commissioner shall send the excess amount to the debtor within a reasonable time after such excess is determined.

3. At the time of the approval of the transfer of funds to a claimant agency pursuant to subsection 2, the commissioner shall notify the claimant agency and the taxpayer or taxpayers whose refund is sought to be set off of the amount approved for setoff.
4. Upon receipt of notice from the commissioner pursuant to subsection 3, the claimant agency shall provide the taxpayer with written notice setting forth:
 - a. The name of the debtor.
 - b. The manner in which the debt arose.
 - c. The amount of the claimed debt.
 - d. The intention to set off the taxpayer's refund against the debt.
 - e. The amount of the refund in excess of the claimed debt.
 - f. The taxpayer's opportunity to give written notice to contest the setoff within thirty days of the date of mailing of the notice.
 - g. The name and mailing address to which the application for a hearing must be sent.
 - h. The fact that failure to apply for such a hearing, in writing within the thirty-day period, will be deemed a waiver of the opportunity to contest the setoff.
5. In the case of a joint return, a notice provided pursuant to subsection 4 must also set forth:
 - a. The name of the taxpayer named in the return, if any, against whom no debt is claimed.
 - b. The fact that a debt is not claimed against such taxpayer.
 - c. The fact that such taxpayer may be entitled to receive a refund if it is due the taxpayer regardless of the debt asserted against the taxpayer's spouse.
 - d. That in order to obtain a refund due to the taxpayer, such taxpayer must apply, in writing, for a hearing with the claimant agency named in the notice within thirty days of the date of the mailing of the notice.
 - e. The fact that failure to apply for such a hearing within thirty days of the mailing of such notice will be deemed a waiver of the opportunity to contest the setoff.
6. Upon Subdivisions f, g, and h of subsection 4 do not apply to debts submitted by the state court administrator for collection through setoff.
7. Except as provided in this subsection, upon receipt of funds transferred pursuant to subsection 2, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity

of the debt. The state court administrator shall submit the transferred funds upon receipt to the state treasurer for deposit in the manner provided by law unless an application for a hearing under subsection 5 is received.

SECTION 3. AMENDMENT. Section 57-38.3-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.3-06. Hearing procedure.

1. If the claimant agency receives written application contesting the setoff or the claim upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the claim is valid. A hearing to contest a setoff sought by the state court administrator is governed by supreme court rule. If the sum asserted as due and owing is not correct, an adjustment to the claimed sum may be made.
2. No issues may be reconsidered at the hearing which have been previously litigated in a court or in any administrative proceeding.
3. Appeals from actions taken at the hearing allowed under this section must be in accordance with the provisions of chapter 28-32. An appeal from a hearing requested under subsection 5 of section 58-38.3-05 to contest a setoff sought by the state court administrator is governed by supreme court rule.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 568

SENATE BILL NO. 2281

(Senators Klein, Grindberg, Taylor)
(Representatives Belter, Mueller, Pollert)

AGRICULTURAL BUSINESS INVESTMENT TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38.6-03 of the North Dakota Century Code, relating to agricultural business investment income tax credits; to amend and reenact sections 57-38.6-01, 57-38.6-02, 57-38.6-03, and 57-38.6-04 of the North Dakota Century Code, relating to agricultural business investment income tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
 - b. ~~Is Has been certified by the securities commissioner to be in compliance with the requirements for filings with the securities commissioner~~ under the securities laws of this state;
 - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; and
 - d. ~~Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities~~ Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
4. "Taxpayer" means an individual, estate, ~~or~~ trust, corporation, partnership, or limited liability company.

SECTION 2. AMENDMENT. Section 57-38.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-02. Certification - Investment reporting by qualified businesses.

The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.

SECTION 3. AMENDMENT. Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate maximum annual investment for which credit a taxpayer may obtain a tax credit under this section is not more than twenty fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to fifteen five taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to a partnership's the passthrough entity's investment in a qualified business must be determined at the partnership passthrough entity level. The amount of the total credit determined at the partnership passthrough entity level must be allowed to the partners, limited to individuals, estates, and trusts passthrough entity's owners, in proportion to their respective ownership interests in the partnership passthrough entity.
5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business

for at least three years. An investment placed in escrow does not qualify for the credit.

6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

SECTION 4. A new subsection to section 57-38.6-03 of the North Dakota Century Code is created and enacted as follows:

A taxpayer whose investment in an agricultural commodity processing facility was made before January 1, 2005, and did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business, subject to the following:

- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
- b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to an investment made before January 1, 2005.
- c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.

SECTION 5. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-04. Taxable year for agricultural business investment tax credit.

The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business.

SECTION 6. EFFECTIVE DATE. Section 1 of this Act is effective for any business certified by the director after December 31, 2004. Sections 2, 3, and 5 of this Act are effective for taxable years beginning after December 31, 2004. Section 4 of this Act is effective for tax year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 4 of this Act.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 569

HOUSE BILL NO. 1055

(Representatives Sitte, Iverson, Pollert, Belter)
(Senators Wardner, Bowman)

TAXATION OF PROPERTY PURCHASED WITH INSURANCE PROCEEDS

AN ACT to amend and reenact sections 57-39.2-01, 57-39.5-03, and 57-40.2-01 and subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to farm machinery gross receipts tax and sales, use, and motor vehicle excise tax exemptions for purchase of replacement property using the amount of insurance compensation for a motor vehicle or farm machinery that has been stolen or totally destroyed; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁴ **SECTION 1. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-01. (Effective through December 31, 2005) Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. ~~Provided, further, when~~
 - a. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold, will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer are not gross receipts. ~~Provided, further, on~~

²⁷⁴ Section 57-39.2-01 was also amended by section 4 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

- b. On all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein.
 - c. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed against one or more replacement purchases in ~~an~~ a cumulative amount equal to the compensation received for the loss from an insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. ~~The~~ If the full amount of the credit under this subdivision has not been used, the seller shall retain a copy of the notarized statement and, if the full amount of the credit has been used, the seller shall retain the original notarized statement ~~must be retained by the seller~~ to verify the amount of credit or trade-in credit allowed.
 - d. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state.
 - e. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- 4. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
 - 5. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
 - 6. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
 - 7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the

playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail,

telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

(Effective after December 31, 2005) Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing.
5. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
 - a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
6. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated,

drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.

7. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
8.
 - a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
 - (1) The seller's cost of the property sold;
 - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (4) Delivery charges;
 - (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
 - (6) Credit for any trade-in, as determined by state law.
 - b. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
 - c. "Gross receipts" does not include:
 - (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
 - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
 - (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.
9. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:
- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
 - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
 - c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

10. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
11. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
12. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
13. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.

14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.
15. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and

the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

16. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
17. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
18. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, gas, steam, and prewritten computer software.

²⁷⁵ **SECTION 2. AMENDMENT.** Section 57-39.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-03. (Effective after December 31, 2005) Replacement of insured machinery credit. When new farm machinery is purchased as a replacement for machinery on which the insurant has previously paid the gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is allowed against one or more replacement purchases in an a cumulative amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machinery was a total loss and indicating the amount of compensation. The If the full amount of the credit under this section has not been used, the seller shall retain a copy of the notarized statement and, if the full amount

²⁷⁵ Section 57-39.5-03 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

~~of the credit has been used, the seller shall retain the original~~ notarized statement ~~must be retained by the seller~~ to verify the amount of credit or trade-in credit allowed.

²⁷⁶ **SECTION 3. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-01. (Effective through December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons", "relief agency", "retail sale", "sale", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" also means, in those instances when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed against one or more replacement purchases in a cumulative amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. ~~The~~ If the full amount

²⁷⁶ Section 57-40.2-01 was also amended by section 14 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

of the credit under this subsection has not been used, the seller shall retain a copy of the notarized statement and, if the full amount of the credit has been used, the seller shall retain the original notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

5. "Purchased at retail" includes, but is not limited to:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.
 - e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - f. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.
9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.

(Effective after December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons", "relief agency", "retail sale", "sale", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or

component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.

3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
5. "Purchased at retail" includes, but is not limited to:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.
 - e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - f. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor,

employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.
9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.
10. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

²⁷⁷ **SECTION 4. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in an a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

²⁷⁷ Section 57-40.3-01 was also amended by section 14 of House Bill No. 1342, chapter 344, and section 4 of Senate Bill No. 2101, chapter 324.

SECTION 5. EFFECTIVE DATE. This Act is effective for property stolen or totally destroyed after June 30, 2004. Section 2 of this Act is effective for property stolen or totally destroyed for which replacement property is purchased after December 31, 2005.

Approved March 23, 2005

Filed March 23, 2005

CHAPTER 570

SENATE BILL NO. 2379

(Senators Nething, Christmann, Cook)
(Representatives Monson, Wald)

BUNDLED TELECOMMUNICATIONS SERVICES TAXATION

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to separation of bundled telecommunications services to identify services exempt from sales and use taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Bundled telecommunications services including exempt services. In the case of a bundled transaction of services that includes telecommunications services, if the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services is subject to tax under this chapter and chapter 57-40.2 unless the provider can reasonably identify the nontaxable portion of the services from its books and records kept in the regular course of business.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 571

HOUSE BILL NO. 1179

(Representatives Devlin, Herbel, Vigesaa)
(Senators Fischer, J. Lee, Robinson)

ASSISTED LIVING FACILITY SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for assisted living facilities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁸ **SECTION 1. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code, as effective through December 31, 2005, is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services.

²⁷⁹ **SECTION 2. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services.

²⁷⁸ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

²⁷⁹ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 572

HOUSE BILL NO. 1368

(Representatives Uglem, Iverson, Kreidt, Potter)
(Senators Klein, Taylor)

EMERGENCY MEDICAL SERVICES SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales made to an emergency medical services provider; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁰ **SECTION 1. AMENDMENT.** Subsection 24 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health and "emergency medical services provider" means an emergency medical services operation licensed by the state department of health under chapter 23-27.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 31, 2005
Filed March 31, 2005

²⁸⁰ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 573**SENATE BILL NO. 2176**

(Senator Wardner)

BULLION SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 31 of section 57-39.2-04 of the North Dakota Century Code, relating to sales and use tax exemption for sales of precious metal bullion; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸¹ **SECTION 1. AMENDMENT.** Subsection 31 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

31. Gross receipts from the sale of money including all legal tender coins and currency and from the sale of precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years or events occurring after June 30, 2005.

Approved March 9, 2005

Filed March 9, 2005

²⁸¹ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 574

SENATE BILL NO. 2170

(Senators Wardner, Lyson, O'Connell)
(Representatives Froseth, Rennerfeldt, Solberg)

CARBON DIOXIDE TAX EXEMPTION AND GEOPHYSICAL EXPLORATION

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for carbon dioxide used for enhanced recovery of oil or natural gas; to amend and reenact sections 38-08.1-01 and 38-08.1-04.1 of the North Dakota Century Code, relating to definitions and exploration permit requirements to conduct geophysical exploration; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Commission" means the industrial commission.
2. "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.
3. "Operator of the land" means the surface owner or the surface owner's tenant of the land upon or within one-half mile [.80 kilometer] of the land on which geophysical operations are to be conducted.
4. "Permitting agent" means a person who secures a permit from an operator of the land to conduct geophysical exploration activities.
5. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

SECTION 2. AMENDMENT. Section 38-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04.1. Exploration permit.

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit". A person may not engage in geophysical exploration activities in this

state without having first obtained a geophysical exploration permit from the commission.

2. The permit must show, at a minimum:
 - a. The name of the person.
 - b. The name and address of the resident agent for service of process.
 - c. That an application to engage in geophysical exploration has been duly filed.
 - d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.
3. The permit must be signed by the director of the commission's oil and gas division or the director's designee. The permit is valid for one year.
4. Within seven days of initial contact between the permitting agent and the operator of the land, the permitting agent shall provide the operator of the land and each landowner owning land within one-half mile [.80 kilometer] of the land on which geophysical exploration activities are to be conducted a written copy of section 38-08.1-04.1 and chapter 38-11.1.
5. The ~~permitholder~~ permitting agent shall notify the operator of the land at least ~~three~~ seven days ~~prior to~~ before the commencement of any geophysical exploration activity, unless waived by mutual agreement of both parties. The notice must include the approximate time schedule and the location of the planned activity.
- 6- 6. 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.
- 6- 7. 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.

²⁸² **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

²⁸² Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.

²⁸³ **SECTION 4.** A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 22, 2005

Filed March 25, 2005

²⁸³ Section 57-40.2-04 was also amended by section 17 of House Bill No. 1043, chapter 580, and section 2 of Senate Bill No. 2050, chapter 582.

CHAPTER 575

HOUSE BILL NO. 1496

(Representatives Nelson, S. Kelsh, Monson)
(Senators Seymour, Tollefson)

HYDROGEN TAX EXEMPTIONS

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a sales and use tax exemption for sales of hydrogen and production, storage, and transportation equipment used by a facility engaged in hydrogen generation and a special fuels tax exemption for the sale of hydrogen; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁴ **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale at retail of hydrogen to power an internal combustion engine or fuel cell and equipment used directly and exclusively in production and storage of the hydrogen by a hydrogen generation facility in this state. For purposes of this subsection, "storage" means stationary and portable hydrogen containers or pressure vessels, piping, tubing, fittings, gaskets, controls, valves, gauges, pressure regulators, safety relief devices, and other accessories intended for hydrogen storage containers or pressure vessels.

SECTION 2. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Special fuels tax exemption for hydrogen. Sales of hydrogen to power an internal combustion engine or fuel cell are exempt from the taxes imposed by sections 57-43.2-02 and 57-43.2-03.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2005, and before July 1, 2010, and is thereafter ineffective.

Approved April 22, 2005
Filed April 25, 2005

²⁸⁴ Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 576

HOUSE BILL NO. 1498

(Representatives Porter, Belter, Drovdal, R. Kelsch)
(Senators Christmann, Cook)

REFINERY EQUIPMENT SALES TAX EXEMPTION

AN ACT to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2 of the North Dakota Century Code, relating to sales and use tax exemption for machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of equipment of a new or existing oil refinery or gas processing plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁵ **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. Reduced rate and exemption for power plant construction and production equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:

a. "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

b. "Operator" means any person owning, holding, or leasing a power plant or process unit.

~~b.~~ c. "Power plant" means:

(1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

²⁸⁵ Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1268, chapter 577.

- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
2. Sales of production or environmental upgrade equipment used exclusively in power plants or processing units that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales applicable tax rate~~ imposed by this chapter and apply to the commissioner for a refund.
 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁶ **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. Reduced rate and exemption for power plant construction and production equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.

²⁸⁶ Section 57-40.2-04.2 was also amended by section 2 of House Bill No. 1268, chapter 577.

~~b-~~ c. "Power plant" means:

- (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
- (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.

~~e-~~ e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

2. Sales of production or environmental upgrade equipment used exclusively in power plants or processing units that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales~~ applicable tax rate imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved March 9, 2005

Filed March 10, 2005

CHAPTER 577

HOUSE BILL NO. 1268

(Representatives Belter, Delzer, Kerzman)
(Senators Christmann, Freborg, O'Connell)

COAL CONVERSION FACILITY TAX REDUCTION

AN ACT to create and enact a new subsection to section 57-60-01 of the North Dakota Century Code, relating to definitions for coal conversion facilities privilege tax purposes; to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsection 3 of section 57-60-01, and section 57-60-02 of the North Dakota Century Code, relating to sales, use, and coal conversion facilities privilege tax exemptions and rate reductions for environmental upgrade and repowering of a power plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁷ **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. Reduced rate and exemption for power plant construction and, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:

- a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
- b. "Operator" means any person owning, holding, or leasing a power plant.
- ~~b.~~ c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single

²⁸⁷ Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1498, chapter 576.

electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- 6. d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
- 2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
- 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales~~ applicable tax rate imposed by this chapter and apply to the commissioner for a refund.
- 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁸ **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. Reduced rate and exemption for power plant construction and, production, environmental upgrade, and repowering equipment.

- 1. As used in this section, unless the context otherwise requires:

 - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in

²⁸⁸ Section 57-40.2-04.2 was also amended by section 2 of House Bill No. 1498, chapter 576.

machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.

b. "Operator" means any person owning, holding, or leasing a power plant.

~~b.~~ c. "Power plant" means:

(1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

~~c.~~ d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.

2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the ~~five percent sales applicable tax rate~~ imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Coal conversion facility" means any of the following:

- a. A plant, other than an electrical generating plant or a coal beneficiation plant, with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453592.37 metric tons] of coal per year;
- b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ten thousand kilowatts or more; or
- c. A plant, with all additions thereto, which is designed for coal beneficiation.
- d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite from its natural form into gas and has a capacity of ten thousand kilowatts or more.

²⁹⁰ **SECTION 4.** A new subsection to section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

"Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.

SECTION 5. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from such facility for the preceding month and is in the amount of four and one-tenth percent of such gross receipts. For purposes of this

²⁸⁹ Section 57-60-01 was also amended by section 4 of House Bill No. 1268, chapter 577.

²⁹⁰ Section 57-60-01 was also amended by section 3 of House Bill No. 1268, chapter 577.

subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction or completed repowering after June 30, 1991, are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction or completed repowering after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant.
4. For coal gasification plants, the tax is the greater of either the amount provided in subsection 1 or thirteen and one-half cents on each one thousand cubic feet [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from April 20, 1987, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete

exemption from the remaining fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.

6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2005.

Approved March 21, 2005
Filed March 23, 2005

CHAPTER 578

SENATE BILL NO. 2267

(Senators Erbele, Andrist, Thane)
(Representatives Brandenburg, Maragos, Pietsch)

SENIOR CITIZEN PROGRAMS

AN ACT to create and enact section 57-39.2-26.2 of the North Dakota Century Code, relating to allocation of sales, use, and motor vehicle excise tax revenues to a state matching program for senior citizen services and programs; to amend and reenact subsection 5 of section 57-15-56 and section 57-39.2-26 of the North Dakota Century Code, relating to a state matching program for senior citizen services and programs; to provide a continuing appropriation; to provide a statement of legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-56 of the North Dakota Century Code is amended and reenacted as follows:

5. The department of human services state treasurer shall provide matching funds as provided in this subsection for the amounts levied by counties and cities for senior citizen services and programs operated pursuant to funded as required by this section. The grants must be made on or before March first of each year and must be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such to each eligible county. A county receiving a grant under this section which has not levied a tax under this section shall transfer the amount received to a city within the county which has levied a tax under this section. A grant may not be made to any county or city which that has not filed with the department of human services state treasurer a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services state treasurer on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection. A matching fund grant must be provided from the senior citizen services and programs fund to each eligible county equal to two-thirds of the amount levied in dollars in the county under this section for the taxable year, but the matching fund grant applies only to a levy of up to one mill under this section.

It is the intent of the legislative assembly that counties or cities allocate an amount equal to one-third of one mill of property tax revenue from their funds raised or received under section 57-15-06, 57-15-08, or 57-39.2-26.1, or any combination of those fund sources, for senior citizen services and programs for each taxable year. A continuing appropriation of state matching funds and expectation of a local matching fund effort is initiated because of the anticipated increase in state aid distribution fund allocations, with the intent of stabilizing matching funds for senior citizen services and programs at a funding

level of one mill for all participating counties. A county is not required to provide the one-third of one mill matching funds if the county program can be covered with the funding from the state and the levy under this section in the county. It is also anticipated that this change in funding will allow reduction of mill levies under this section in some counties, which will allow allocation of unused amounts under section 57-39.2-26.2 among counties levying the statutory maximum amount for taxable year 2004.

SECTION 2. AMENDMENT. Section 57-39.2-26 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26. Allocation of revenue. All Except as provided by sections 57-39-26.1 and 57-39.2-26.2, all moneys collected and received under this chapter must be paid into the state treasury and must be credited by the state treasurer to the general fund. Moneys deposited with the commissioner as security for the payment of tax, penalties, or costs due must be deposited and accounted for as provided in subsection 3 of section 57-39.2-12.

SECTION 3. Section 57-39.2-26.2 of the North Dakota Century Code is created and enacted as follows:

57-39.2-26.2. Allocation of revenues to senior citizen services and programs matching fund - Continuing appropriation. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to the amount of revenue that would have been generated by a levy of two-thirds of one mill on the taxable valuation of all property in the state subject to a levy under section 57-15-56 in the previous taxable year must be deposited by the state treasurer in the senior citizen services and programs fund during the period from July first through December thirty-first of each year. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax revenues which must be deposited in the fund as determined under this section. Revenues deposited in the senior citizen services and programs fund are provided as a standing and continuing appropriation for allocation as provided in subsection 5 of section 57-15-56. Any unexpended and unobligated amount in the senior citizen services and programs fund at the end of the 2005-07 biennium must be allocated among counties that levied the statutory maximum mill levy for taxable year 2004 in proportion to the dollars generated by those levies in those counties for that year but the allocation to any county may not exceed the difference between combined funding for the county's senior citizen services and programs for taxable year 2004 and the combined funding for those services and programs for taxable year 2006 and any remaining unexpended and unobligated amount at the end of any biennium must be transferred by the state treasurer to the state general fund.

SECTION 4. LEGISLATIVE INTENT - HOME-DELIVERED MEALS. It is the intent of the fifty-ninth legislative assembly that the department of human services encourage providers, to the extent possible, to allocate additional resources to make available more home-delivered meals for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 5. EFFECTIVE DATE. This Act is effective for tax collections received after June 30, 2005.

CHAPTER 579**HOUSE BILL NO. 1042**

(Legislative Council)
(Taxation Committee)

**STREAMLINED SALES TAX GOVERNING BOARD
REPRESENTATION**

AN ACT to create and enact a new section to chapter 57-39.4 of the North Dakota Century Code, relating to North Dakota representation on the streamlined sales tax governing board and state and local advisory council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

Membership of streamlined sales tax governing board and state and local advisory council.

1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council, shall represent the state of North Dakota on the streamlined sales tax governing board.
2. One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative council, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.
3. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board or council.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 580**HOUSE BILL NO. 1043**

(Legislative Council)
(Taxation Committee)

STREAMLINED SALES TAX COMPLIANCE

AN ACT to create and enact sections 57-39.2-03.9, 57-39.5-05, and 57-39.6-05 and chapter 57-39.7 of the North Dakota Century Code, relating to application of sales taxes to tobacco products, use taxes and credits for storage, use, or consumption in this state of farm machinery or alcoholic beverages, and a lodging gross receipts tax; to amend and reenact subsection 2 of section 11-09.1-05, sections 40-05.1-06, 57-01-02.1, and 57-39.2-01, subdivision h of subsection 1 of section 57-39.2-02.1, subsection 26 of section 57-39.2-04, subdivision d of subsection 2 of section 57-39.2-04.1, section 57-39.2-26.1, subsection 8 of section 57-39.4-16, section 57-40.2-01, subsection 2 of section 57-40.2-02.1, and sections 57-40.2-03.2, 57-40.2-04, and 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax amendments to conform with the provisions of the Streamlined Sales Tax Act; to repeal section 57-39.2-03.8 and subsection 33 of section 57-39.2-04 of the North Dakota Century Code, relating to elimination of provisions in conflict with the Streamlined Sales Tax Act; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code, as effective after December 31, 2005, 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 and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts 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 that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or

²⁹¹ Section 11-09.1-05 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

act of the governing body of a home rule county may not supersede 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. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

²⁹² **SECTION 2. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

40-05.1-06. (Effective after December 31, 2005) Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

²⁹² Section 40-05.1-06 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. The authority to levy taxes under this subsection does not include authority to impose income taxes.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.

12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used

exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

²⁹³ **SECTION 3. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-01-02.1. (Effective through December 31, 2005) Tax collection agreements with home rule cities or counties.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1, or of any county which has adopted the home rule provisions of chapter 11-09.1, and the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby the tax commissioner has authority to collect any sales or use taxes assessed by such incorporated city or county.
2. It is the duty of the tax commissioner to deposit with the state treasurer all money collected under this section and to accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of the several cities or counties the money to which they are entitled under this section.
3. The agreements entered into under this section may also provide for an agreed amount to be allowed the tax commissioner for services rendered in connection with such collections. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.

(Effective after December 31, 2005) Tax collection agreements with home rule cities or counties - Limitations on city or county authority.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 or of any county which has adopted the home rule provisions of chapter 11-09.1 must enter a contract with the tax commissioner giving the tax commissioner authority to collect any sales ~~or~~ use, or gross receipts taxes assessed by such incorporated city or county.
2. The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of cities or counties the money to which cities or counties are entitled under a contract under this section.
3. Contracts under this section shall provide for an agreed amount to be allowed the tax commissioner for services. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.

²⁹³ Section 57-01-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.
5. A retailer shall collect city and county sales and use taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter and a taxpayer is eligible for refund from the tax commissioner of the difference between the amount of city and county sales, use, or gross receipts taxes paid and the amount that would have been due by application of a cap or threshold provided by city or county ordinance, resolution, or charter.

²⁹⁴ **SECTION 4. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-39.2-01. (Effective after December 31, 2005) Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
 - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
 - b. The total weight of the taxable property compared to the total weight of all property in the shipment.

²⁹⁴ Section 57-39.2-01 was also amended by section 1 of House Bill No. 1055, chapter 569, and section 2 of Senate Bill No. 2050, chapter 582.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

5. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.
6. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
 - a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
- ~~6.~~ 7. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
- ~~7.~~ 8. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
- ~~8.~~ 9. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) The seller's cost of the property sold;

- (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (4) Delivery charges;
 - (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
 - (6) Credit for any trade-in, as determined by state law.
- b. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- c. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
 - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
 - (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
 - (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.
9. 10. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;

- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

- ~~40-~~ 11. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- ~~44-~~ 12. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
- ~~42-~~ 13. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
- ~~43-~~ 14. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
- ~~44-~~ 15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a

wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

- 45- 16. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
- 46- 17. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other

periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

- ~~47.~~ 18. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
- ~~48.~~ 19. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

²⁹⁵ **SECTION 5. AMENDMENT.** Subdivision h of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

- h. Sale, lease, or rental of a computer ~~software~~ and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
- (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific

²⁹⁵ Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

SECTION 6. Section 57-39.2-03.9 of the North Dakota Century Code is created and enacted as follows:

57-39.2-03.9. (Effective January 1, 2006) Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars and other tobacco products includes any other taxes imposed on such merchandise or its use or on the retail or other sale of such merchandise.

²⁹⁶ **SECTION 7. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, ~~or~~ mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:
- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
 - (1) Can withstand repeated use;
 - (2) Is primarily and customarily used to serve a medical purpose;
 - (3) Generally is not useful to a person in the absence of illness or injury; and

²⁹⁶ Section 57-39.2-04 was also amended by section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582 section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction.

- b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Prosthetic device" and "durable medical equipment" include "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.
- (3) Artificial teeth sold by a dentist.
- (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
- (5) Crutches and wheelchairs for the use of disabled persons.
- (6) Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.
- (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.
- (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.
- (9) Devices and supplies designed or intended for ostomy care and management to include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (10) Supplies, equipment, and devices to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

²⁹⁷ **SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

SECTION 9. 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 revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to 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, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 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, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and 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. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:
 - (1) Thirty-two percent of the amount must be allocated equally among the counties; and
 - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

²⁹⁷ Section 57-39.2-04.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

- b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:
 - (1) Forty percent of the amount must be allocated equally among the counties; and
 - (2) The remaining amount must be allocated 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. 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. Nineteen and four-tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.
 - b. Thirty-four and five-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. Six and one-tenth 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.

- g. Three and four-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.
- h. Two and six-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.

²⁹⁸ **SECTION 10. AMENDMENT.** Subsection 8 of section 57-39.4-16 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

- 8. "Mobile telecommunications service" means the same as that term is defined in section ~~424(5)~~ 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.

SECTION 11. Section 57-39.5-05 of the North Dakota Century Code is created and enacted as follows:

57-39.5-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.

- 1. A person who receives farm machinery for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that farm machinery at the rate imposed under section 57-39.5-02.
- 2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the farm machinery is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

²⁹⁸ Section 57-39.4-16 was also amended by section 1 of Senate Bill No. 2050, chapter 582.

SECTION 12. Section 57-39.6-05 of the North Dakota Century Code is created and enacted as follows:

57-39.6-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.

1. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate imposed under section 57-39.6-02.
2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the alcoholic beverages is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

SECTION 13. Chapter 57-39.7 of the North Dakota Century Code is created and enacted as follows:

57-39.7-01. (Effective from January 1, 2006, through June 30, 2007) Imposition - Exemptions. There is imposed a tax of one percent upon the gross receipts of retailers from all sales at retail within this state from the leasing or renting of hotel, motel, or tourist court accommodations for periods of fewer than thirty consecutive days. The tax imposed under this chapter does not apply to leasing or renting of bed and breakfast accommodations licensed under chapter 23-09.1.

57-39.7-02. (Effective from January 1, 2006, through June 30, 2007) Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including refund or credit, provided therein, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter.

57-39.7-03. (Effective from January 1, 2006, through June 30, 2007) Allocation of revenue. Revenue from the tax imposed by this chapter must not be considered to be a portion of sales, use, and motor vehicle excise tax collections under section 57-39.2-26.1. Revenue from the tax imposed by this chapter must be deposited in the state general fund.

²⁹⁹ **SECTION 14. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-01. (Effective after December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "~~persons~~ person", "relief agency",

²⁹⁹ Section 57-40.2-01 was also amended by section 3 of House Bill No. 1055, chapter 569, and section 2 of Senate Bill No. 2050, chapter 582.

"retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.

2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
5. "Purchased at retail" includes, ~~but is not limited to:~~
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - ~~e.~~ d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - ~~d.~~ e. The severance of sand or gravel from the soil.
 - ~~e.~~ f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - ~~f.~~ g. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.
8. "Tangible personal property" means:
 - a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.
40. 9. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

³⁰⁰ **SECTION 15. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

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 new farm machinery and new 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 new farm machinery and new 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 new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ at the time it was brought into this state.

SECTION 16. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of ~~alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises,~~ and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. ~~Notwithstanding any other provision of law, there is imposed a tax of seven percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.~~

³⁰⁰ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2050, chapter 582.

³⁰¹ **SECTION 17. AMENDMENT.** Section 57-40.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-04. (Effective after December 31, 2005) Exemptions. This chapter hereby is declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by chapter 57-39.2 and does not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the permit prescribed by section 57-39.2-14.
2. Tangible personal property brought into this state by a nonresident thereof for that person's own storage, use, or consumption while temporarily within this state, except that such property is not exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession.
3. Any motor vehicle either subject to or expressly exempted from the motor vehicle excise taxes imposed by chapter 57-40.3.
4. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
5. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.
6. Newsprint and ink actually used in the publication of a newspaper.
7. Repealed by S.L. 1981, ch. 582, § 3.
8. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition in this state if the sale of the tickets or admissions to the exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.
9. Adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.
10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of factory manufactured

³⁰¹ Section 57-40.2-04 was also amended by section 2 of Senate Bill No. 2050, chapter 582, and section 4 of Senate Bill No. 2170, chapter 574.

homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation.

11. Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious organizations.

12. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:

- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction.

- b. "Mobility-enhancing equipment" means equipment not including durable medical equipment, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by a person with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:
- (1) Artificially replace a missing portion of the body;
 - (2) Prevent or correct a physical deformity or malfunction; or
 - (3) Support a weak or deformed portion of the body.
- "Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
- d. "Supplies for ostomy care or bladder dysfunction" includes:
- Artificial devices individually designed, constructed, or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.
- b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
 - e. Artificial teeth sold by a dentist.
 - d. Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
 - e. Crutches and wheelchairs for the use of invalids and crippled persons.
 - f. Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.
 - g. Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.
 - h. Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by permanently physically disabled persons.
- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin

protectors, and other supplies especially designed for use of ostomates.

- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, and other items used for the care and management of bladder dysfunction.

13. Purchases of electricity.
14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection 44 15 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.
15. Any tangible personal property or service which would be exempt from the retail sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were purchased in North Dakota.
16. Gross receipts from the sale of money including all legal tender coins and currency.
17. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.
- ~~18. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.~~
- ~~49.~~ Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.
- ~~20.~~ 19. The donation by a retailer of tangible personal property to an organization exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
- ~~24.~~ 20. Air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.

22. 21. Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
23. 22. Gross receipts from the initial sale of beneficiated coal.
24. 23. Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.

SECTION 18. AMENDMENT. Section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.1. Use tax exemption for food and food products. Gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products when purchased by consumers for consumption off the premises where purchased, are exempt from the use tax imposed by chapter 57-40.2. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the use tax imposed by this chapter. Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this section, "food" and "food products" do not include: ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
 - a. Alcoholic beverages or mixed drinks made from alcoholic beverages.
 - b. Candy or chewing gum.
 - Carbonated beverages.
 - Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.
 - Powdered drink mixes.
 - Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
 - Coffee and coffee substitutes.
 - Tea.
 - Cocoa or cocoa products.

- c. Dietary supplements.
- d. Prepared food.
- e. Soft drinks containing less than fifty percent fruit juice.
- f. Tobacco.

2. For purposes of this section:

- a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
- b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
- c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.
- d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
- e. "Prepared food" does not mean:
 - (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent food-borne illness.

(3) If sold without eating utensils provided by the seller:

- (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
- (b) Food sold in an unheated state by weight or volume as a single item.
- (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

³⁰² **SECTION 19. REPEAL.** Section 57-39.2-03.8 and subsection 33 of section 57-39.2-04 of the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE - EXPIRATION DATE. Section 13 of this Act is effective for taxable events occurring from January 1, 2006, through June 30, 2007, and is thereafter ineffective. The remainder of this Act is effective for taxable events occurring after December 31, 2005.

Approved April 11, 2005
Filed April 12, 2005

³⁰² Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

CHAPTER 581

SENATE BILL NO. 2359

(Senators Cook, Urlacher)
(Representatives Drovdal, Weiler)

STREAMLINED SALES TAX COLLECTION AGREEMENTS

AN ACT to amend and reenact subsection 2 of section 57-39.2-11, subsection 1 of section 57-39.2-12.1, and subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code, relating to compensation of a remote seller or certified service provider under streamlined sales tax collection agreements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is ~~not~~ allowed under this section unless if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07. If the retailer's filing responsibility has been assumed by a certified service provider, the retailer may authorize the certified service provider to claim on behalf of the retailer all or part of the compensation to which the retailer is entitled under sections 57-39.2-12.1 and 57-40.2-07.1.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the tax due under section 57-39.2-12 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes.

SECTION 3. AMENDMENT. Subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the tax due under section 57-40.2-07 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after September 30, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 582

SENATE BILL NO. 2050

(Senators Cook, Urlacher)
(Representatives Drovdal, Weiler)

STREAMLINED SALES TAX AGREEMENT IMPLEMENTATION

AN ACT to amend and reenact section 3 of chapter 538 of the 2003 Session Laws and section 26 of chapter 539 of the 2003 Session Laws, relating to the implementation date for streamlined sales and use tax agreement compliance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 3 of chapter 538 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable events occurring after ~~December 31~~ September 30, 2005.

³⁰³ **SECTION 2. AMENDMENT.** Section 26 of chapter 539 of the 2003 Session Laws is amended and reenacted as follows:

³⁰³ Section 11-09.1-05 was also amended by section 1 of House Bill No. 1043, chapter 580, section 40-05.1-06 was also amended by section 2 of House Bill No. 1043, chapter 580, section 57-01-02.1 was also amended by section 3 of House Bill No. 1043, chapter 580, section 57-01-02.1 was also amended by section 3 of House Bill No. 1043, chapter 580, section 57-39.2-01 was also amended by section 4 of House Bill No. 1043, chapter 580, and section 1 of House Bill No. 1055, chapter 569, section 57-39.2-02.1 was also amended by section 5 of House Bill No. 1043, chapter 580, section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 7 of House Bill No. 1259, chapter 470, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94; section 57-39.2-04.1 was also amended by section 8 of House Bill No. 1043, chapter 580, section 57-39.5-03 was also amended by section 2 of House Bill No. 1055, chapter 569, section 57-40.2-01 was also amended by section 14 of House Bill No. 1043, chapter 580, and section 3 of House Bill No. 1055, chapter 569, section 57-40.2-02.1 was also amended by section 15 of House Bill No. 1043, chapter 580, section 57-40.2-04 was also amended by section 17 of House Bill No. 1043, chapter 580, and section 4 of Senate Bill No. 2170, chapter 574.

SECTION 26. EFFECTIVE DATE. This Act is effective for taxable events occurring after ~~December 31~~ September 30, 2005.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 583**SENATE BILL NO. 2123**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

**DISABLED VETERAN MOTOR VEHICLE EXCISE TAX
EXEMPTION**

AN ACT to amend and reenact subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to the exemption from motor vehicle excise taxes on the acquisition or lease of a motor vehicle by a disabled veteran.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁴ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901] or who has a one hundred percent service-connected disability as determined by the department of veterans affairs who registers the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. ~~The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.~~

Approved March 7, 2005

Filed March 8, 2005

³⁰⁴ Section 57-40.3-04 was also amended by section 8 of Senate Bill No. 2208, chapter 340.

CHAPTER 584

HOUSE BILL NO. 1478

(Representatives Berg, Belter, Nelson, Pollert)
(Senators Espegard, Klein)

E85 FUEL TAXATION

AN ACT to create and enact a new subsection to section 57-43.1-01 of the North Dakota Century Code, relating to a definition of E85 fuel; to amend and reenact sections 57-43.1-02 and 57-43.1-28 of the North Dakota Century Code, relating to reduced motor vehicle fuels tax rate for sales of E85 fuel, deposit of taxes on that fuel in the township highway aid fund, and to provide for transfer of funds to the highway tax distribution fund; 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 subsection to section 57-43.1-01 of the North Dakota Century Code is created and enacted as follows:

"E85 fuel" means a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains eighty-five percent ethanol by volume, but at a minimum must contain sixty percent ethanol by volume. E85 produced for use as a motor fuel must comply with ASTM specification D 5798-96.

³⁰⁵ **SECTION 2. 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 twenty-one cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. Sale of E85 fuel is exempt from the tax imposed under subsection 1 and is instead subject to a tax of one cent per gallon [3.79 liters] on all E85 fuel sold or used in this state. The tax imposed under this subsection is not subject to refund under section 57-43.1-03 or 57-43.1-03.1. Within the scope of this section, the entire amount of this tax exemption must be available to consumers of E85.
3. A supplier or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.

³⁰⁵ Section 57-43.1-02 was also amended by section 12 of Senate Bill No. 2012, chapter 40.

- ~~3-~~ 4. The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
- ~~4-~~ 5. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
- ~~5-~~ 6. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
- ~~6-~~ 7. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 3. AMENDMENT. Section 57-43.1-28 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-28. Transfer, deposit, and distribution of funds. Taxes, license fees, penalties, and interest collected under the provisions of this chapter must be transferred to the state treasurer who shall deposit the moneys collected to the highway tax distribution fund, except the entire proceeds of the tax imposed on E85 fuel under subsection 2 of section 57-43.1-02 must be deposited in the township highway aid fund and allocated as provided in section 54-27-19.1. At the time of each transfer for deposit in the highway tax distribution fund, the tax commissioner shall certify to the state treasurer the number of gallons of E85 fuel sold or used in this state during the time period covered by that transfer and exempt from the tax under subsection 1 of section 57-43.1-02. The department of commerce shall seek approval for the transfer to the state treasurer of twenty cents for each gallon certified by the tax commissioner, from the agricultural products utilization commission funding for deposit in the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2005, and through the month in which a cumulative total of 1,200,000 gallons of E85 fuel has been reported to the commissioner as required in section 57-43.1-02, and after that date is ineffective.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 585**HOUSE BILL NO. 1078**

(Finance and Taxation Committee)
(At the request of the State Treasurer)

OIL PRODUCTION TAX CALCULATION

AN ACT to create and enact a new subsection to section 57-51-05 of the North Dakota Century Code, relating to calculation of the oil and gas gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51-05 of the North Dakota Century Code is created and enacted as follows:

All calculations of the gross production tax on oil or gas, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.

Approved March 8, 2005

Filed March 8, 2005

CHAPTER 586**HOUSE BILL NO. 1404**

(Representatives Rennerfeldt, Drovdal, Iverson, Norland)
(Senators Bowman, Wardner)

OIL AND GAS IMPACT GRANT FUND ALLOCATIONS

AN ACT to amend and reenact subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to oil and gas gross production tax allocations to the oil and gas impact grant fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~five~~ six million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved March 30, 2005
Filed March 31, 2005

WAREHOUSING AND DEPOSITS

CHAPTER 587

HOUSE BILL NO. 1167

(Agriculture Committee)

(At the request of the Public Service Commission)

WAREHOUSE TICKETS, CONTRACTS, AND REPORTS

AN ACT to amend and reenact section 60-02-11, subsection 6 of section 60-02-16, sections 60-02-17, 60-02-24, 60-02-30, 60-02-31, and 60-02-32, and subsection 4 of section 60-02-40 of the North Dakota Century Code, relating to the conversion of warehouse scale tickets, termination of warehouse storage contracts, and filing of monthly reports; and to repeal section 60-02-37 of the North Dakota Century Code, relating to notification to the public service commission of the destruction of a warehouse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02-11. Scale ticket - Contents - Conversion.

1. Every public warehouseman, upon receiving grain into its warehouse, shall issue a uniform scale ticket for each load of grain received. Such tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within ~~thirty~~ forty-five days after the grain is delivered to the warehouse.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in its warehouse, a publication identifying whether storage will be available to its patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

SECTION 2. AMENDMENT. Subsection 6 of section 60-02-16 of the North Dakota Century Code is amended and reenacted as follows:

6. Have printed upon it the following words: "All storage contracts on grain in store at public grain warehouses ~~shall terminate on June thirtieth of each year, except storage contracts for dry edible beans which shall terminate on April thirtieth of each year~~ _____, as identified in the publication required by section 60-02-17. If storage charges and warehouseman's advances remain unpaid at the time of ~~such~~ termination, the warehouseman ~~shall~~ may sell a sufficient amount of

said grain to pay ~~such~~ the charges and advances. The ~~holder hereof~~ receiptholder shall surrender ~~this~~ the receipt to the issuing warehouseman for settlement."

SECTION 3. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This fee schedule publication must be filed with the commission as a part of its the warehouse license application or annual renewal. These The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised schedule publication with the commission.

SECTION 4. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure. Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission. The report must contain or be verified by a written declaration that it is made under the penalties of perjury. The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

2. File the report with the commission not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances shall the grain account and other accounts be mixed.

~~No~~ The commission may refuse to renew a license shall be issued to any public warehouseman who fails to make a required report.

SECTION 5. AMENDMENT. Section 60-02-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02-30. Termination of public grain warehouse storage contracts. All storage contracts terminate on the date identified in the publication required by section 60-02-17. If a different termination date is not identified in the publication, then all storage contracts on grain in store at public grain warehouses terminate on June thirtieth of each year, except for storage contracts on dry edible beans which terminate on April thirtieth of each year. Storage on any or all grain in storage at public grain warehouses may be terminated by the owner at any time before the applicable date mentioned herein by the payment of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the grain in storage, or notice to the warehouseman to sell the stored grain. In the absence of a demand for delivery, an order to sell, or a request for the renewal of the storage contract, entered into prior to the expiration of the storage contract, for all grains except dry edible beans, the warehouseman shall sell, upon the expiration of the storage contract and compliance with section 60-02-31, at the local market price on the close of business on that day, sufficient amounts of the stored grain to satisfy all accrued storage charges thereon and warehouseman's advances upon the storage contract, and shall issue a new warehouse receipt for the balance of the grain in storage to the owner thereof upon the surrender of the old warehouse receipt, properly canceled. Upon the expiration of the storage contract for dry edible beans, the warehouseman is not obligated to renew the storage contract. In the absence of a demand for delivery, an order to sell, or an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth the termination date of the storage contract, the warehouseman may sell, upon the expiration of the storage contract, at the local market price on the close of business on that day, all the stored beans grain of the receipt holder and tender to the receipt holder the proceeds of the sale, less an amount which will satisfy all accrued storage charges thereon and the warehouseman's advances upon any previous storage contract.

SECTION 6. AMENDMENT. Section 60-02-31 of the North Dakota Century Code is amended and reenacted as follows:

60-02-31. Notice to owner of termination of storage contract. ~~On or before June first of each year, for all grains except dry edible beans At least thirty days before the termination date of a storage contract, the warehouseman shall notify the receipt holder by mail the person in whose name the grain was stored of the termination of the storage contract on June thirtieth and the warehouseman's intention to sell a sufficient amount of the stored grain on June thirtieth to satisfy accrued storage charges unless the receipt holder prior to that time demands redelivery, authorizes sale, or continues the storage contract. On or before April first of each year, a warehouseman storing dry edible beans shall notify by mail the person in whose name the dry edible beans are stored of the warehouseman's~~

intention to terminate the storage contract on ~~April thirtieth, or at a later~~ the date pursuant to an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, identified on the storage contract and to sell all dry edible beans grain stored as of that date, unless the receipt holder prior to that time demands redelivery, authorizes sale, extends the storage contract, or enters into a new contract with the warehouseman for restorage. Failure to comply with this section ~~shall result~~ results in the forfeiture of storage charges accrued for the grain during the previous twelve months.

SECTION 7. AMENDMENT. Section 60-02-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02-32. Reissue warehouse receipts - Provisions. Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, ~~for all grains except dry edible beans, if the receipt holder elects and the warehouseman agree~~ to continue the storage contract, the warehouseman then shall may extend the storage contract or issue a new warehouse receipt to the owner and shall cancel the former receipt by endorsing thereon the words: "Canceled by the issuance of warehouse receipt no. _____", inserting the number of the reissue warehouse receipt thereafter, and the holder's name shall be signed thereto by the holder or by the holder's authorized agent. The reissue warehouse receipt shall be so designated by stamping thereon: "Reissue of warehouse receipt no. _____".

SECTION 8. AMENDMENT. Subsection 4 of section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred; ~~such warehouse receipts to be filed with the commission until called for by the owner.~~

SECTION 9. REPEAL. Section 60-02-37 of the North Dakota Century Code is repealed.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 588

SENATE BILL NO. 2136

(Agriculture Committee)

(At the request of the Public Service Commission)

ROVING GRAIN BUYER LICENSES AND FACILITIES

AN ACT to create and enact a new section to chapter 60-02.1 of the North Dakota Century Code, relating to licensing of roving grain buyers; to amend and reenact sections 60-02.1-07 and 60-02.1-17 of the North Dakota Century Code, relating to licensing and monthly reports of grain buyers; and to repeal section 60-02.1-24 of the North Dakota Century Code, relating to notification to the public service commission of the destruction of a facility operated by a facility-based grain buyer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. ~~The~~ Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license application that becomes is issued effective on or after June first does not expire until May thirty-first, that license expires on July thirty-first of the following calendar year. A facility-based grain buyer must obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is three hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location. ~~The annual license fee for a roving grain buyer is two hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.~~

If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 2. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Roving grain buyer license - How obtained - Fee. Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state must obtain an annual license from the commission. Except as provided in this section, each license expires on July thirty-first of each year. When a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is two hundred

dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 3. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-17. Reports to be made by grain buyers - Penalty for failure. Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission. The report must contain or be verified by a written declaration that it is made under the penalties of perjury. The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the commission not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

A The commission may refuse to renew a license ~~may not be reissued~~ to any grain buyer who fails to make a required report.

SECTION 4. REPEAL. Section 60-02.1-24 of the North Dakota Century Code is repealed.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 589

HOUSE BILL NO. 1142

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

CREDIT-SALE CONTRACT INDEMNITY

AN ACT to amend and reenact sections 60-10-06 and 60-10-08 of the North Dakota Century Code, relating to the reimbursement limit and order of payment from the credit-sale contract indemnity fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-10-06 of the North Dakota Century Code is amended and reenacted as follows:

60-10-06. Credit-sale contract indemnity fund - Reimbursement limit. The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

SECTION 2. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies. The public service commission shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the public service commission is appointed trustee under section 60-02.1-29 or 60-04-03.

Approved March 15, 2005

Filed March 16, 2005

WATERS

CHAPTER 590

SENATE BILL NO. 2155

(Senators Heitkamp, Fischer, G. Lee)
(Representatives Belter, Delmore, Hawken)

GROUND WATER POLICY

AN ACT to create and enact a new section to chapter 61-01 of the North Dakota Century Code, relating to findings and declaration of policy of the legislative assembly concerning the use of ground water for irrigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-01 of the North Dakota Century Code is created and enacted as follows:

Findings and declaration of policy - Use of ground water for irrigation.

The legislative assembly finds that the use of ground water for irrigation purposes is vitally important to the economic future of this state. The reliance on processing plants for the consistent quality resulting from irrigation is an important factor in preserving this state's reputation for quality agricultural production. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission strongly discourages the conversion of agricultural water permits to any other use. Further, the legislative assembly declares that any feasible or reasonable alternative supply of water be made available for municipal or domestic use to enable the continued use of ground water for irrigated agriculture and agricultural processing.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 591

HOUSE BILL NO. 1153

(Appropriations Committee)

(At the request of the State Water Commission)

WATER COMMISSION BONDS

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws, relating to the issuance of bonds for construction of an outlet from Devils Lake; to amend and reenact sections 61-02.1-01 and 61-02.1-02.1 of the North Dakota Century Code, relating to the water commission's authority to issue bonds for projects; to repeal section 61-02.1-02 of the North Dakota Century Code, relating to bond issuance amount limits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws is amended and reenacted as follows:

Section 11. EXPIRATION DATE. ~~Except for the issuance of bonds for construction of an outlet from Devils Lake, the~~ The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2004 2007, and after that date is ineffective. ~~The authority of the commission to issue bonds as provided in chapter 61-02.4 for construction of an outlet from Devils Lake is effective through June 30, 2005, and after that date is ineffective.~~ However, the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 2. AMENDMENT. Section 61-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects 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 and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project 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 and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.

3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from 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; 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 and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly 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.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:
 - a. When:
 - (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
 - (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
 - (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;

- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
 - (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; and
 - (8) ~~That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and~~
 - ~~(9)~~ That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;
 - b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or
 - c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.
6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1,

2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection; provided that:
 - a.
 - (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when either the state water commission or the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan 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;
 - (2) The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and
 - (3) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.
 - b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit 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 Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation; municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River section.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 for a project unless federal funds have been appropriated for that project.
10. Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.

11. ~~Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.~~

SECTION 3. AMENDMENT. Section 61-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-02.1. Funding - Statewide water development projects - Bond issuance amount.

1. The priorities for the statewide water development program ~~for the 2001-03 biennium~~ include municipal, rural, and industrial projects; irrigation projects; general water management projects, including rural flood control, snagging and clearing, channel improvement, recreation, and planning studies; flood control projects; and weather modification projects, which are authorized and declared to be in the public interest. The state water commission may provide the funds necessary to construct these projects from money appropriated to the state water commission from the resources trust fund, the water development trust fund, or by issuing bonds in an amount not to exceed ~~twenty~~ sixty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this section.
2. If the state water commission determines it is appropriate to do so, it may, in lieu of issuing or in combination with the issuance of bonds pursuant to ~~sections this section or section~~ 61-02.1-01 ~~and 61-02.1-02~~, for all or part of the state's cost share for the projects set forth in those provisions, use funds appropriated to it from the resources trust fund or the water development trust fund.

SECTION 4. REPEAL. Section 61-02.1-02 of the North Dakota Century Code is repealed.

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

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 592

HOUSE BILL NO. 1399

(Representatives Damschen, DeKrey, Monson)
(Senators Fischer, Trenbeath)

WATERCOURSE SPECIAL ASSESSMENTS

AN ACT to amend and reenact section 61-16.1-09.1 of the North Dakota Century Code, relating to special assessments for snagging, clearing, and maintaining watercourses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris of bridges and low water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be determined by the state engineer. All provisions of this chapter apply to assessments levied under this section except:
 - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
- (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.

- (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
- (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the ~~board~~ affected water resource boards and a quorum of the ~~board~~ affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

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

Approved March 15, 2005
Filed March 16, 2005

CHAPTER 593

HOUSE BILL NO. 1274

(Representatives Wald, Haas, Kerzman)
(Senators Urlacher, Wardner)

SOUTHWEST PIPELINE RATES FOR LARGE USERS

AN ACT to amend and reenact section 61-24.3-07 of the North Dakota Century Code, relating to southwest pipeline water delivery rates and charges for large industrial users; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.3-07 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-07. Capacity for industrial use. Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user. ~~Any large industrial user shall pay, in the manner determined by the commission, at least the proportionate costs of the project based on the large industrial user's proportionate capacity of the southwest pipeline project. In this section, large industrial user means an industrial user which uses seven hundred twenty-four acre feet [803030 cubic meters] of water or more each year for industrial purposes, including, but not limited to, electrical generation or energy conversion facilities.~~

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

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 594

SENATE BILL NO. 2293

(Senators Heitkamp, Every, Traynor)
(Representatives Devlin, D. Johnson, Vigasaa)

WATER SUPPLY SYSTEM CONVERSION

AN ACT to create and enact a new section to chapter 61-35 of the North Dakota Century Code, relating to conversion of water resource district water supply systems to water districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Conversion of water resource district water supply system to water district. A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the state engineer to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water supply system and is

responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

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

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 595

SENATE BILL NO. 2126

(Natural Resources Committee)

(At the request of the State Water Commission)

DEVILS LAKE OUTLET COMMITTEE MEMBERSHIP

AN ACT to amend and reenact section 61-36-01 of the North Dakota Century Code, relating to membership of the Devils Lake outlet management advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-36-01 of the North Dakota Century Code is amended and reenacted as follows:

61-36-01. 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 member appointed by the upper Sheyenne River 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 August 1, 1997. 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.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 596

SENATE BILL NO. 2295

(Senators Heitkamp, Fischer, G. Lee)

(Representatives Carlson, Thoreson)

LAKE AGASSIZ WATER AUTHORITY BONDS

AN ACT to create and enact a new subsection to section 61-35-12 and sections 61-39-06, 61-39-07, 61-39-08, 61-39-09, 61-39-10, 61-39-11, 61-39-12, 61-39-13, 61-39-14, 61-39-15, and 61-39-16 of the North Dakota Century Code, relating to issuance of bonds by the Lake Agassiz water authority; and to amend and reenact sections 61-39-01, 61-39-02, 61-39-03, and 61-39-05 of the North Dakota Century Code, relating to water supply contracts and membership of and powers of the Lake Agassiz water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the district to secure payment of the district's obligations created by the contracts.

SECTION 2. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. Findings and declaration of policy. The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern North Dakota. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

SECTION 3. AMENDMENT. Section 61-39-02 of the North Dakota Century Code is amended and reenacted as follows:

61-39-02. Lake Agassiz water authority created. The Lake Agassiz water authority consists of cities and water districts located in that part of the state which is included within the boundaries of Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Sargent, and Richland Counties and that pay dues to the authority. Minnesota cities may join the authority, provided a portion of the city is located within five miles [8.05 kilometers] of this state, or if the city uses the Red River for its primary water supply. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in this chapter, or which may be reasonably implied. Cities and water districts may pay dues to the authority as determined by the authority.

SECTION 4. AMENDMENT. Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

61-39-03. Lake Agassiz water authority - Board of directors. The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.
8. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.

City North Dakota city members must be selected for two-year terms by election by cities located east of state highway 1 during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Water district members must be selected for two-year terms by election by water districts located east of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the ~~Garrison Diversion Conservancy District~~ Lake Agassiz water authority.

SECTION 5. AMENDMENT. Section 61-39-05 of the North Dakota Century Code is amended and reenacted as follows:

61-39-05. Authority of the ~~district~~ Lake Agassiz water authority. The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the agencies or political subdivisions of the state; its agencies, or its political subdivisions of North Dakota or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

6. Operate and manage the authority to distribute water ~~throughout eastern North Dakota to its members and others~~ within or outside the territorial boundaries of ~~the authority~~ this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority ~~which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, which Red River valley water supply projects the Garrison Diversion Conservancy District may acquire, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute without limitation on term of years.~~
9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on term of years.
- 9- 10. Borrow money as provided in this chapter.
- 40- 11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, construction, reconstruction, or improvement of one or more Red River valley water supply projects, or any feasibility study or preliminary economic,

engineering, or legal work relating to any Red River valley water supply project.

44. 13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
42. 14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
43. 15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
44. 16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds as well as, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
45. 17. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
46. 18. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter into agreements with the agency respecting the loan or grants.
47. 19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

SECTION 6. Section 61-39-06 of the North Dakota Century Code is created and enacted as follows:

61-39-06. Resolution authorizing the issuance of revenue bonds. The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the

board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

Each resolution providing for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

SECTION 7. Section 61-39-07 of the North Dakota Century Code is created and enacted as follows:

61-39-07. Provisions governing bonds. The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, or if an interest rate is variable, the method for calculating the interest rate.
2. Whether the bonds will be in one or more series.
3. The date or dates the bonds will bear.
4. The time or times the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. The terms of redemption, if any, to which the bonds will be subject.
8. The manner in which the bonds will be executed.
9. The terms, covenants, and conditions that the bonds will contain.
10. The form in which the bonds will be issued, either coupon or registered.

SECTION 8. Section 61-39-08 of the North Dakota Century Code is created and enacted as follows:

61-39-08. Sale of bonds - When private sale authorized - Public sale and notice. Revenue bonds or refunding bonds may be sold at public or private sale on such terms as the board deems appropriate.

SECTION 9. Section 61-39-09 of the North Dakota Century Code is created and enacted as follows:

61-39-09. Notes issued pending preparation of bonds - Negotiability. Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

SECTION 10. Section 61-39-10 of the North Dakota Century Code is created and enacted as follows:

61-39-10. Validity of notes and bonds. Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding

obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the notes or bonds have ceased to be officers of the issuing authority. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

SECTION 11. Section 61-39-11 of the North Dakota Century Code is created and enacted as follows:

61-39-11. Notes and bonds exempt from taxation. Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the authority pursuant to this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 12. Section 61-39-12 of the North Dakota Century Code is created and enacted as follows:

61-39-12. Covenants and provisions that may be inserted in resolution authorizing bonds. Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.
2. The use and disposition of all or a portion of the authority's income, profits, and revenues.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.
6. The creation, priority, and enforcement of liens against the authority's income, profits, or revenues.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the authority's income, profits, or revenues.
8. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the authority's borrowing rate and or reduce its exposure to interest rate risk.

9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the authority of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the authority issued to finance or refinance a project or that may be outstanding when the bonds thus subordinated are issued and delivered.
16. Provisions with respect to the authority entering an agreement with a private bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a guarantee, a letter of credit, or any other credit or liquidity enhancement that the authority may find to be advantageous or necessary to insure, guaranty, or enhance the payment of the principal of or interest on or liquidity for some or all of the bonds. The cost of any such enhancement or liquidity may be paid from bond proceeds or from other funds of the authority available for this purpose.

This section does not authorize the authority to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness of the state or the issuance of any instrument which would constitute a debt or indebtedness of the state within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness of the state or the issuance of an instrument constituting a debt or indebtedness of the state.

SECTION 13. Section 61-39-13 of the North Dakota Century Code is created and enacted as follows:

61-39-13. Liability of authority for notes and bonds - Taxing power prohibited. Bond anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the authority's notes and bonds may not be subject to any pecuniary liability. The holder of any such notes or bonds may not enforce payment of the notes or bonds against any property of the authority. Notes

and bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the authority, other than the revenues pledged to their payments. Each note and each bond issued under this chapter must recite in substance that the note or bond and interest on the note or bond is payable solely from the revenue pledged to the payment and that the note or bond does not constitute a debt of the state within the meaning of any constitutional or statutory limitation.

SECTION 14. Section 61-39-14 of the North Dakota Century Code is created and enacted as follows:

61-39-14. Duties of authority and officers relative to the issuance of bonds. To adequately secure the payment of bonds and interest on the bonds, the authority and its officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Operate any project financed by the authority in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rental, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of any project;
 - b. To make all payments required under any water purchase contract the authority may execute;
 - c. To pay the interest and principal on the authority's notes and bonds as they become due;
 - d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - e. To meet any other obligations of the authority that are charges, liens, or encumbrances upon the revenues of the authority.
3. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the authority in good repair, working order, and condition.
4. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.
5. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.

6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.
8. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the authority are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

The duties contained in this section may not require any expenditure by the authority of any funds other than revenue received from a project or water sale contract. The performance of the duties enumerated in this section is of the essence of the contract of the authority with the bondholders.

SECTION 15. Section 61-39-15 of the North Dakota Century Code is created and enacted as follows:

61-39-15. Remedies of bondholders in general. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other civil action, enforce the holder's rights against the authority and its board and any of its officers, agents, or employees and may require the authority or the board or any officers, agents, or employees of the authority or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By civil action, require the authority and the board to account as if they were the trustees of an express trust.
3. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

SECTION 16. Section 61-39-16 of the North Dakota Century Code is created and enacted as follows:

61-39-16. Project - Definition. As used in this chapter, unless the context otherwise requires, the term project means either a system, plant, works, instrumentality, or property used to provide water supply in connection with the Red River valley water supply project, or a contract for the purchase of water, including a contract for the bulk purchase of water from the Garrison Diversion Conservancy District delivered by means of a Red River valley water supply project.

Approved March 25, 2005

Filed March 25, 2005

WEAPONS

CHAPTER 597

HOUSE BILL NO. 1086

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

SECURITY OFFICER FIREARM POSSESSION

AN ACT to amend and reenact section 62.1-02-04 of the North Dakota Century Code, relating to a private security officer's possession of a firearm in a retail liquor establishment or gaming site; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment or gaming site prohibited - Penalty - Exceptions. Any person who enters or remains in that part of the establishment that is set aside for the retail sale in an establishment engaged in the retail sale of alcoholic beverages or used as a gaming site while in the possession of a firearm or dangerous weapon is guilty of a class A misdemeanor. This section does not apply to:

1. A law enforcement officer.
2. The proprietor.
3. The proprietor's employee.
4. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.
5. Private security personnel while on duty for the purpose of delivering or receiving moneys used at the liquor establishment or gaming site.

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

Approved March 30, 2005

Filed March 31, 2005

CHAPTER 598

HOUSE BILL NO. 1505

(Representatives Charging, Brandenburg, DeKrey, Delzer, Dietrich)
(Senator Hacker)

SENTENCING ALTERNATIVES AND FIREARMS PURCHASE

AN ACT to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives; and to repeal section 62.1-02-12 of the North Dakota Century Code, relating to the purchase of certain firearms from another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A Except as provided in section 62.1-02-01, a person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.

SECTION 2. REPEAL. Section 62.1-02-12 of the North Dakota Century Code is repealed.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 599

HOUSE BILL NO. 1205

(Representatives Porter, DeKrey)
(Senators Lyson, Stenehjem, Tollefson, Traynor)

CONCEALED WEAPON PERMIT TESTING

AN ACT to amend and reenact section 62.1-04-03 of the North Dakota Century Code, relating to concealed weapon permit testing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁶ **SECTION 1. AMENDMENT.** Section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
 - b. The applicant is not a person specified in section 62.1-02-01.
 - c. The applicant has the written approval for the issuance of ~~such~~ a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has attended a testing procedure conducted pursuant to rules adopted by the attorney general. The testing procedure for approval of a concealed weapons license must ~~include~~ ~~be~~ an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a ~~proficiency test consisting of a course of fire to be designated by the criminal justice training and statistics division of the attorney general's office.~~ The purpose of the ~~proficiency test~~ is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. A weapons instructor certified by the attorney general shall conduct the testing procedure. The attorney general shall develop rules that ensure that this testing will

³⁰⁶ Section 62.1-04-03 was also amended by section 1 of Senate Bill No. 2219, chapter 600.

be conducted ~~periodically~~. The ~~local agency person~~ conducting the testing may assess a charge of up to ~~fifty~~ twenty-five dollars for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license.

- d. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
 - e. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.
2. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of its receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
3. The license fee for a concealed weapons license is twenty-five dollars. Ten dollars of this fee must be credited to the state general fund and fifteen dollars of this fee must be credited to the attorney general's operating fund up to a total of seventy-five thousand dollars each biennium. Any collections from fifteen dollars of this fee in excess of the seventy-five thousand dollars credited to the attorney general's operating fund each biennium must be credited to the state general fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.
4. The chief of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
5. The chief of the bureau of criminal investigation may deny an application or revoke or cancel ~~such~~ a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.

6. The applicant may appeal a denial or revocation of this license to the district court of the applicant's county of residence.
7. The attorney general may adopt rules to carry out this title.

Approved April 14, 2005

Filed April 18, 2005

CHAPTER 600

SENATE BILL NO. 2219

(Senators Syverson, Lyson, Traynor)
(Representatives Bernstein, Froelich, Porter)

CONCEALED WEAPONS PERMITS

AN ACT to create and enact a new subsection to section 62.1-04-03 of the North Dakota Century Code, relating to concealed weapon permit information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁷ **SECTION 1.** A new subsection to section 62.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Information collected from an applicant under this section is confidential information. However, the information may be disclosed:

- a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
- b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
- c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.

Approved March 22, 2005

Filed March 22, 2005

³⁰⁷ Section 62.1-04-03 was also amended by section 1 of Senate Bill No. 1205, chapter 599.

WEEDS

CHAPTER 601

SENATE BILL NO. 2280

(Senators Klein, Erbele, Krauter)

(Representative Boe)

NOXIOUS WEED AND PEST ERADICATION

AN ACT to create and enact seventeen new sections to chapter 63-01.1 of the North Dakota Century Code, relating to the control of eradication of noxious weeds and pests; to amend and reenact subsection 1 of section 4-33-11 and sections 63-01.1-01, 63-01.1-02, 63-01.1-03, 63-01.1-03.1, 63-01.1-04, 63-01.1-04.1, 63-01.1-05, 63-01.1-05.1, 63-01.1-06, 63-01.1-08, 63-01.1-09, 63-01.1-10.1, 63-01.1-12, 63-01.1-12.1, 63-01.1-12.2, 63-01.1-13, 63-01.1-14, and 63-01.1-15 of the North Dakota Century Code, relating to the control and eradication of noxious weeds and pests; to repeal section 63-01.1-04.2 of the North Dakota Century Code, relating to pest control by county weed boards; to provide for reports to the legislative council; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any political subdivision may appropriate money for the control of pests under this chapter or ~~section 63-01.1-04.2~~ chapter 63-01.1. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.

SECTION 2. AMENDMENT. Section 63-01.1-01 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-01. Control and eradication of noxious weeds. ~~It shall be the duty of every~~ Every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, under statutory authority or otherwise, ~~to shall~~ shall ~~control or eradicate or to control the spread of~~ noxious weeds on those lands.

SECTION 3. AMENDMENT. Section 63-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-02. Definitions. As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "City weed control officer" means an individual designated by a city weed board to be responsible for the operation and enforcement of this chapter within the city.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
- ~~3- 4.~~ "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part or, if authorized, to suppress, eradicate, or prevent, or retard the spread of a pest.
- ~~4. 5.~~ "Control authority" means the commissioner, the a county weed board, and, pursuant to the county weed board's authorization, the a county weed control officer, a city weed board, or a city weed control officer.
- ~~5- "County weed board" means members of the board of each county as appointed pursuant to section 63-01.1-04.~~
6. "County weed control officer" means ~~the person~~ an individual designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.
7. "Eradicate" ~~or "eradication"~~ means to destroy a plant or, ~~if authorized,~~ a pest so that it is not viable.
8. "Highway, street, or road" means a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a "road" and a highway in an urban area may be called a "street".
9. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise. The term does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.
- ~~9- 10.~~ "Noxious weed" means any a plant propagated by either seed or vegetative parts and which is determined by the commissioner after consulting with the North Dakota state university extension service, or which is determined by a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.
- ~~40- 11.~~ "Operator" means the person chiefly responsible for the farming operations or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.

11. "Person" means any individual, partnership, firm, corporation, limited liability company, company, society, association, the state, or any department, agency, or subdivision thereof, or any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in this state.
12. "Pest" means any pest defined in section 4-33-01 and includes a prairie dog.
13. "Township road" means a an improved public road that is an improved road, not located in an incorporated city and not designated as part of a county, state, or federal-aid road system, but constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and; does not necessarily have to be surfaced. A; does not include a sodded road is not a township road. In order for; and includes a section line to be a township road it must be if that section line is graded and, drained, and be an improved a maintained road. A township road is a public road that is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.

SECTION 4. AMENDMENT. Section 63-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03. State weed control authority - Agriculture commissioner - Powers and duties Duties. The commissioner shall:

1. The duty of enforcing Enforce this chapter and carrying out its provisions and intent is vested in the commissioner. The commissioner shall cooperate;
2. Cooperate with other weed control authorities-
2. The commissioner shall determine and law enforcement officers;
3. Determine which weeds are noxious for the purposes of a state list of noxious weeds after consulting with the North Dakota state university extension service and shall compile;
4. Compile and keep current a list of noxious weeds-
3. The commissioner shall outline;
5. Establish procedures; and prepare and supply official all notices, posters, report forms, and other documents needed in carrying out this chapter. The commissioner shall supply these documents to weed control officers; county, township, and city authorities; and others as needed to carry out an effective weed control program or, if authorized, pest control program. The commissioner shall prepare notices or;
6. Prepare all notices and posters including featuring the noxious weed list, rules, dates for controlling noxious weeds, and other compliance requirements, for printing in official newspapers or for posting at least annually-

4. ~~The commissioner shall cooperate with the county weed board, county weed control officers, highway patrol officers, county sheriffs, and others in enforcing this chapter. The commissioner shall also encourage;~~
7. Encourage the North Dakota state university extension service to disseminate information and to conduct educational campaigns with respect to the control and eradication and control of noxious weeds or, if authorized, and pests.
5. ~~The commissioner upon receiving a written complaint shall immediately refer the complaint;~~
8. Except as otherwise provided, forward all written complaints to the proper weed control officer or control authority.
6. ~~The commissioner shall encourage the cooperation of agencies of both the federal and state governments in furtherance of the purposes of this chapter.~~
7. ~~The commissioner may adopt rules to carry out the intent of this chapter.~~
8. ~~The commissioner may require operational or program reports from weed control authorities or weed control officers regarding weed control progress and activity in the state and, if authorized, pest control progress and activity in the state;~~
9. ~~The commissioner shall call Call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the North Dakota state university extension service or others to present educational information on weed control practices or, if authorized, pest control practices. Weed control authority members must be invited to attend meetings called pursuant to this subsection invite all weed control authority members to attend; and~~
10. Encourage the cooperation of federal and state agencies in furthering this chapter.

SECTION 5. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

State weed control authority - Agriculture commissioner - Powers. The commissioner may require operational reports and program reports from weed control authorities regarding both noxious weed control and pest control.

SECTION 6. AMENDMENT. Section 63-01.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03.1. County weed board - Jurisdiction. All land within the boundaries of North Dakota, including all federal, state, private, and municipally owned lands, is included in the county weed board's jurisdiction within the county in which the land is located. The jurisdiction of each county weed board extends to all land within the county but does not include any land within the corporate limits of a city if that city has its own noxious weed control program under this chapter.

SECTION 7. AMENDMENT. Section 63-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04. County weed board as control authority - Members - Terms - Compensation.

1. ~~The county weed board of each county is the control authority for that county.~~
2. ~~The Each board of county commissioners shall establish ~~the number of members of the board and shall establish~~ county weed board member areas. Each county weed board member area must be contiguous.~~
2. 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 residing 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 corporate limits of that city unless the city has established a city its own noxious weed control program pursuant to section 63-01.1-10.1 under this chapter.
3. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
4. The board of county commissioners shall remove a member of the county weed board for repeated unexcused ~~failure~~ failures to attend meetings ~~or, for refusal or incapacity to act as a board member. When, or for incapacity.~~ If a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual, who possesses the necessary qualifications, ~~as a board member~~ to fill the unexpired term.
5. The county weed board shall elect from its members a chairman and a vice chairman; and shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the county weed board.
6. The board of county commissioners may set rates of compensation for board members. Board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for state employees.

SECTION 8. AMENDMENT. Section 63-01.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04.1. Powers and duties of county County weed board - Duties.

1. ~~The Each county weed board shall designate a county weed control officer who shall cooperate with the board and be responsible for the operation and enforcement of this chapter within the district county. The county weed control officer may be a member of the county weed board or may be any other interested and able person. The same person. An~~

individual may serve as a weed control officer for more than one ~~county~~ weed board. Employment is for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and is without regard to any provisions of law relating to age or dual compensation. ~~The A~~ county weed board shall certify the designation of a county weed control officer to the commissioner.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.
3. The county weed board may develop and compile a county list of noxious weeds. Any county list shall, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the North Dakota state university extension service.
4. ~~County weed boards~~ Each county weed board shall cooperate with all other control authorities.
5. The
3. Each county weed board shall implement and pursue an effective a program for the control of noxious weeds ~~and, if authorized, pests.~~
6. The
4. Each county weed board shall fix the time and place of regular meetings. ~~The Each~~ board shall meet at least once each year ~~and the meeting is.~~ All meetings are open to the public. ~~The Each~~ board shall keep minutes of ~~all its~~ meetings and a complete record of all official acts.
7. The
5. Each county weed board shall ~~make~~ conduct at least one annual inspection to determine the progress of noxious weed control activities within the county ~~and, if authorized, the progress of pest control activities within the county.~~
8. The
6. Each county weed board shall control and disburse all moneys received by the county, for noxious weed control, from any source.
9. The
7. Each county weed board shall ~~render~~ provide technical assistance to any city ~~with that has~~ a population of three thousand or more ~~and which establishes a its own noxious weed control program as provided in section 63-01.1-10.1 under this chapter.~~

10. ~~The county weed board may authorize the county weed control officer in cooperation with local law enforcement personnel to stop and inspect vehicles suspected of transporting noxious weed-infested materials.~~

SECTION 9. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Powers. A county weed board may:

1. Authorize the county weed control officer to cooperate with local law enforcement personnel in stopping and inspecting vehicles suspected of transporting noxious weed-infested materials.
2. Expend funds from all available sources if a control authority determines that the extent of noxious weed infestation on certain land is so severe that eradication would place an extreme financial burden on the person otherwise liable for the expense.
3. Employ additional personnel to assist with noxious weed control and eradication efforts.

SECTION 10. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Development of county weed list. A county weed board may develop and compile its own list of noxious weeds, provided the list includes all weeds determined to be noxious by the commissioner. The commissioner, after consulting with the county weed board and the North Dakota state university extension service, may require that a county weed board remove a noxious weed from its list.

SECTION 11. AMENDMENT. Section 63-01.1-05 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-05. Duties of county weed control officer. The county weed control officer shall:

1. ~~Cooperate with the county weed board, other all weed control authorities and weed control officers, the county extension agent, county agents, land users, the commissioner, and others in furtherance of the provisions of~~ to further this chapter.
2. ~~Become acquainted with the location of noxious weeds and, if authorized, pests~~ on all land within the county.
3. ~~Through personal contact, by letter, telephone, or other means, encourage~~ Encourage noxious weed ~~and, if authorized, pest~~ control or eradication by all landowners ~~or~~ and land occupants within the county.
4. ~~Investigate all complaints regarding noxious weeds received by the county weed control officer, the county weed board, or the commissioner~~ any control authority.
5. Take ~~proper~~ enforcement action when necessary.

6. ~~Cause to be posted or inserted~~ Post or publish in official newspapers these official any notices the commissioner may deem determines necessary in the furtherance of to further noxious weed control or eradication under this chapter.
7. Prepare reports as requested by the commissioner.
8. Attend area or statewide meetings called by the commissioner ~~for the purpose of assisting in the effective execution of~~ to further noxious weed control or eradication under this chapter.
9. ~~Serve as county seed inspector for the purposes of enforcing the laws and regulations under the jurisdiction of the state seed department as directed by the state seed commissioner.~~

SECTION 12. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board members - Terms - Compensation.

1. If the governing body of a city elects to establish a noxious weed control program for the city, the governing body shall appoint a city 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 must be staggered so that no more than two expire each year. Any qualified elector residing within the city is eligible to serve on the board.
2. A board member shall assume office at the first regular meeting of the city weed board following that member's appointment.
3. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
4. The city weed board shall elect from its members a chairman and a vice chairman and shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the city weed board.
5. The governing body of the city may set rates of compensation for city weed board members. City weed board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for city employees.

SECTION 13. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Duties.

1. Each city weed board shall designate a city weed control officer who shall cooperate with the board and be responsible for the operation and enforcement of this chapter within the city. The city weed control officer may be a member of the city weed board. An individual may serve as a

weed control officer for more than one weed board. Employment is for a tenure and at rates of compensation and reimbursement for travel expenses as the city weed board may prescribe and is without regard to any provision of law relating to dual compensation. A city weed board shall certify the designation of a city weed control officer to the commissioner.

2. Each city weed board shall cooperate with all other control authorities.
3. Each city weed board shall implement and pursue an effective program for the control of noxious weeds.
4. Each city weed board shall fix the time and place of regular meetings. Each board shall meet at least once each year. All meetings are open to the public. Each board shall keep minutes of its meetings and a complete record of all official acts.
5. Each city weed board shall conduct at least one annual inspection to determine the progress of weed control activities within the city.
6. Each city weed board shall control and disburse all moneys received by the city from any source for noxious weed control.

SECTION 14. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Powers. A city weed board may:

1. Authorize the city weed control officer to cooperate with local law enforcement personnel in stopping and inspecting vehicles suspected of transporting noxious weed-infested materials.
2. Expend funds from all available sources if a control authority determines that the extent of noxious weed infestation on certain land is so severe that eradication would place an extreme financial burden on the person otherwise liable for the expense.
3. Employ additional personnel to assist with noxious weed control and eradication efforts.

SECTION 15. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Development of city weed list. A city weed board may develop and compile its own list of noxious weeds, provided the list includes all weeds determined to be noxious by the commissioner. The commissioner, after consulting with the city weed board and the North Dakota state university extension service, may require that a city weed board remove a noxious weed from its list.

SECTION 16. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

Duties of city weed control officer. The city weed control officer shall:

1. Cooperate with all weed control authorities, county extension agents, land users, and others to further this chapter.

2. Become acquainted with the location of noxious weeds on all land within the city.
3. Encourage noxious weed control or eradication by all landowners and land occupants within the city.
4. Investigate all complaints received by any control authority regarding noxious weeds within the city.
5. Take enforcement action when necessary.
6. Post or publish in the official newspaper of the city any notices the commissioner deems necessary to further noxious weed control or eradication under this chapter.
7. Prepare reports as requested by the commissioner.
8. Attend area or statewide meetings called by the commissioner to further noxious weed control or eradication under this chapter.

SECTION 17. AMENDMENT. Section 63-01.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-05.1. Certification of county and city weed control officers - Extension service.

1. The commissioner ~~shall adopt rules setting the requirements for certification categories of county weed control officers~~, after consultation with the director of the agricultural experiment station and the director of the North Dakota state university extension service, or their ~~respective~~ designees, shall adopt rules governing certification categories for county and city weed control officers. All designated ~~Before assuming any duties, each county and city weed control officers officer must be certified pursuant to the under rules adopted by the commissioner before assuming their duties.~~
2. The North Dakota state university extension service shall establish a program to provide educational instruction to ~~local~~ county and city weed control officers.

SECTION 18. AMENDMENT. Section 63-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-06. Funding of county programs.

1.
 - a. The board of county commissioners may pay expenses from the county general fund ~~in any one year in furtherance of~~ to further the county noxious weed control program under this chapter, including to provide noxious weed control or eradication along public highways in the county.
 - b. The county weed board may certify annually to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all taxable property in the county, to carry out this chapter. ~~In addition, the county weed board, with the approval of a majority vote of the~~

- c. The board of county commissioners, by majority vote may certify up to two additional mills on the taxable valuation of all taxable property in the county: If a county assesses more than three mills, at least one mill must be dedicated to leafy spurge control. However, the tax may not be levied on, except property within the corporate limits of a city that establishes a program under section 63-01.1-10.1 this chapter.
 - d. The board of county commissioners shall levy the tax.
 - e. The county treasurer shall hold all taxes levied and collected in a separate funds to be fund known as the noxious weed control or eradication fund and the leafy spurge fund, which shall be used to carry out this chapter. The levy shall be made to cover the salary. Moneys in the fund must be used to pay the salaries and expenses of the county weed board, and the county weed control officer, the expense expenses of noxious weed control or eradication along public highways in the county, and any other expenses incurred in the operation of an effective a county noxious weed control or eradication program in the county. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
2. The commissioner shall allocate the funds county share of any legislative appropriation for noxious weed control or eradication to the county weed boards and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner, after consultation with county weed boards. Landowners shall contribute a minimum of twenty percent of the cost of noxious weed control on their land. No A county weed board or city may not receive an amount in excess of more than one-half of the board's or city's actual cost-share expenditures for noxious weed control or eradication from any legislative appropriation, unless the appropriation provides assistance in noxious weed control to a board or city under subsection 3.
 3. If a commissioner in consultation with the county weed board determines a noxious weed is seriously endangering areas of a county or the state, assistance in control may be provided by legislative appropriation. The commissioner shall allocate the appropriation accordingly, and the commissioner and each affected county weed board and city which establishes a program under section 63-01.1-10.1 shall be responsible for ensuring that the funds are properly expended.
4. 3. To be eligible to receive state landowner assistance cost-share funds dollars a county shall must levy a minimum of at least three mills for noxious weed or leafy spurge control or eradication. The request for allocated funds pursuant to subsections 2 and 3 cost-share dollars must be initiated by the a county weed board or city which establishes a program under section 63-01.1-10.1 by submitting a voucher and documentation. Upon approval of the voucher and documentation by the commissioner, the office of management and budget shall make the payment out of funds appropriated for the control or eradication of noxious weeds.
 4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost.

SECTION 19. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

Funding of city programs.

1.
 - a. The governing body of the city may pay expenses from the city general fund to further the city's noxious weed control program under this chapter, including to provide noxious weed control along public highways in the city.
 - b. The city weed board may certify annually to the governing body of the city a tax, not to exceed two mills on the taxable valuation of all taxable property in the city, to further its noxious weed control program under this chapter.
 - c. The governing body of the city may by majority vote certify up to two additional mills on the taxable valuation of all taxable property in the city to further its noxious weed control program under this chapter.
 - d. The governing body of the city shall levy the tax.
 - e. The city treasurer shall hold all taxes levied and collected under this section in a separate fund known as the noxious weed control or eradication fund. Money in the fund must be used to pay the salaries and expenses of the city weed board and the city weed control officer, the expenses of noxious weed control along public highways in the city, and any other expenses incurred in the operation of a city noxious weed control program. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
2. The commissioner shall allocate any legislative appropriation for noxious weed control or eradication to the city weed boards, pursuant to a formula adopted by the commissioner, after consultation with city weed boards. A city weed board may not receive more than one-half of the city's actual cost-share expenditures for noxious weed control or eradication from any legislative appropriation, unless the commissioner in consultation with the city weed board determines a noxious weed is seriously endangering areas of a city.
3. To be eligible to receive state cost-share dollars, a city must levy at least three mills for noxious weed control or eradication. The request for cost-share dollars must be initiated by a city weed board by submitting a voucher and documentation to the commissioner. Upon approval of the voucher and documentation by the commissioner, the office of management and budget shall make the payment out of funds appropriated for the control or eradication of noxious weeds.
4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost.

SECTION 20. AMENDMENT. Section 63-01.1-08 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-08. Entry upon land for noxious weed control or eradication purposes - Notices - Landowner rights - Remedial requirements - Liens - Penalty.

1. Any control authority ~~and anyone authorized thereby, or its agent~~ may enter upon ~~all land under their~~ within its jurisdiction ~~for the purpose of performing their to perform~~ duties and ~~exercising their to exercise~~ powers under this chapter, including the taking of specimens of weeds ~~or, if authorized, pests~~ or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.
2. If any land within a city that has a noxious weed control or eradication program is found to be infested with noxious weeds by any control authority, the city weed control officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control or eradicate the noxious weeds within the time period prescribed by the city weed control officer. The landowner may request additional time from the city weed board. The notice must state that the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply. The notice must specify minimal remedial requirements. A copy of the notice may be sent by certified mail to any tenant, lessee, or operator of the land. If the city weed board will control or eradicate the noxious weeds upon failure of the landowner to do so, the notice must include a statement of costs. If the landowner does not control or eradicate the noxious weeds within the time specified, the city weed control officer may cause the noxious weeds to be controlled or eradicated and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes. If the city weed board intends to control or eradicate the noxious weeds, the notice must include a statement informing the landowner that the landowner may request that the city weed board not control or eradicate the noxious weeds. If the landowner requests that the city weed board not control or eradicate the noxious weeds, the board may not control or eradicate the noxious weeds until control or eradication is authorized by a majority vote of the city governing body.
3. If any other land is found to be infested with noxious weeds ~~or, if authorized, pests~~ by any control authority, the county weed control officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control or eradicate the noxious weeds ~~or, if authorized, pests~~ within the time period prescribed by the county weed control officer. ~~If the landowner resides in another state, the landowner shall control or eradicate the noxious weeds or, if authorized, pests within the time period prescribed by the county weed control officer.~~ Additional time may be requested. The landowner may request additional time from the county weed board. The notice must specify state that the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply. The notice must specify minimal remedial requirements. A copy of the notice may be sent by certified mail to any tenant, lessee, or operator of the land. If the county weed board will control or eradicate the noxious weeds ~~or, if authorized, pests~~ upon failure of the landowner to control or

~~eradicate the noxious weeds or, if authorized, pests, the notice must also include a statement of costs. If the landowner does not control or eradicate the noxious weeds or, if authorized, pests within the time specified time, the county weed control officer may cause the noxious weeds or, if authorized, pests to be controlled or eradicated and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes. If the county weed board intends to control or eradicate the noxious weeds or, if authorized, pests, the notice must include a statement informing the landowner that the landowner may request that the county weed board not to control or eradicate the noxious weeds or, if authorized, pests. If the landowner requests that the county weed board not to control or eradicate the noxious weeds or, if authorized, pests, the board may not control or eradicate the noxious weeds or, if authorized, pests until control or eradication is authorized by a majority vote of the board control is authorized.~~

SECTION 21. AMENDMENT. Section 63-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-09. County weed board to control or eradicate noxious weeds and pests along county and township roads and highways. The county weed board shall control or eradicate ~~or control~~ noxious weeds ~~or, for purposes of section 63-01.1-04.2, pests as defined in this chapter~~ along county and township roads and highways ~~within the county~~ and the expense incurred for noxious weed control or eradication must be paid from funds as provided in section 63-01.1-06.

SECTION 22. AMENDMENT. Section 63-01.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-10.1. ~~Cities to control~~ Control of noxious weeds within cities.

1. The governing body of any city, ~~with having~~ a population of three thousand or more, may act as a control authority, and may establish and administer a program for the control or eradication of noxious weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.
2. ~~The governing body of any city with a population of three thousand or more may levy a tax, not to exceed two mills on the taxable valuation of property within the corporate limits of the city, to establish and administer the program.~~
3. ~~Moneys received by the cities from the levy may be used in any phase of weed control as determined by the governing body of the city. The control program shall include work on weeds included on any county or state noxious weed list.~~
4. ~~The governing body of a city which establishes a control program may petition the agriculture commissioner for special assistance in funding authorized by section 63-01.1-06.~~
5. ~~The governing body of any city may act in conjunction with any other control authority or officer also required to act under this chapter.~~

SECTION 23. AMENDMENT. Section 63-01.1-12 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12. Preventing dissemination of noxious weeds.

1. To prevent the dissemination of noxious weeds by machinery, trucks, harvesting, or other farm equipment, ~~or and to prevent the dissemination of noxious weeds during transportation of plants, forage, screenings, dirt, and other articles which may be transported by any means,~~ the commissioner shall; ~~from time to time,~~ publish a list of the possible methods of disseminating the by which noxious weeds or their propagating parts ~~of such weeds~~ can be disseminated.
2. All operators of tillage, seeding, and harvesting equipment shall ~~be required to clean such their~~ equipment to prevent the spread of noxious weeds by seed or other propagating parts prior to moving ~~such their~~ equipment on public highways, airways, waterways, or by any other means of conveyance, public or otherwise. Trucks or trailers transporting grain screenings ~~shall must~~ be constructed and covered ~~so as~~ to prevent noxious weed seed dissemination. Scattering and dumping on land or in water ~~of~~ any material containing noxious weed seeds or propagating parts is prohibited unless ~~such the~~ material has been processed or treated, or unless it is buried sufficiently deep deeply enough to destroy the seeds and other propagating parts.

SECTION 24. AMENDMENT. Section 63-01.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12.1. Quarantine period - Materials or farm products and area defined.

1. ~~Whenever the commissioner, the county weed board, or anyone authorized thereby finds any~~ If a control authority determines that an area of the state to be is infested with noxious weeds, and it is established that if materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall; ~~without unnecessary delay,~~ declare a quarantine against the area to prevent the transfer of materials or farm products from the quarantined area. ~~When it is ascertained that~~ If noxious weeds are likely to be introduced into this state by the importation of materials or farm products, the commissioner shall declare a quarantine against the importation of those materials or farm products.
2. The commissioner shall declare ~~an individual county~~ a quarantine when requested ~~by~~ to do so through a resolution adopted by a two-thirds majority of the ~~county weed board of the county~~ having jurisdiction over the area in which the quarantine is to be declared.
3. For the purposes of this section, ~~"area";~~
 - a. "Area" means a geographical section of land ~~as~~ identified by the commissioner, ~~which and~~ may include cities and counties or any portion of a city or county; ~~"farm products";~~

- b. "Farm products" means ~~all~~ crops, crop products, plants or portions thereof, ~~but shall not mean~~ of plants, but does not include livestock; and "materials".
- c. "Materials" means gravel or other substances that can be transported over a state highway, street, or road.

SECTION 25. AMENDMENT. Section 63-01.1-12.2 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12.2. ~~Noxious weed~~ Weed-free certification - Gravel and sand pits and hay land.

1. The commissioner, after ~~consultation~~ consulting with the North Dakota state university extension service, may adopt rules for certifying that gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale are not contaminated with ~~noxious~~ weeds. The rules must identify the extent ~~noxious to which~~ weeds are allowed with certification.
2. The ~~county~~ weed board, after ~~consultation~~ consulting with the North Dakota state university extension service, may certify gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale as not contaminated with ~~noxious~~ weeds.
3. The commissioner shall adopt a schedule of fees that ~~county~~ weed boards and the North Dakota state university extension service may charge for inspecting, testing, analyzing, and certifying gravel, scoria, or sand surface mining operations and hay land.
4. Certification of gravel, scoria, ~~or~~ sand surface mining operations, or hay land is not a warranty of any kind as to the quality of the gravel, sand, or hay produced from an inspected and certified location. The only representation made is that land from which sand and gravel is surface mined or land producing hay for sale or resale has been inspected for weed contamination ~~by noxious weeds~~ under rules adopted by the commissioner.

SECTION 26. AMENDMENT. Section 63-01.1-13 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13. Publicly owned land - ~~Weed and pest~~ Noxious weed control or eradication.

1. The commissioner shall attempt to arrange a ~~satisfactory~~ noxious weed ~~and pest eradication or control~~ or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. ~~Weed~~
2. Weed control officers shall attempt to arrange a ~~satisfactory~~ noxious weed ~~or, if authorized, pest eradication or control~~ or eradication program with ~~cities, park boards, cemeteries, school boards, counties, and other local entities~~ political subdivisions owning or controlling public land within the control authority each weed control officer's jurisdiction. ~~State agencies controlling or having jurisdiction over lands within the~~

3. Each state agency shall provide for eradication or the control or eradication of noxious weeds and pests on such lands. Upon failure of any land within its jurisdiction. If a state agency fails to adequately control or eradicate noxious weeds or, if authorized, pests on land under its control jurisdiction, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control or eradicate the noxious weeds and, if authorized, pests. The state agency shall reimburse the county weed board for expenses incurred in the control or eradication of the noxious weeds or, if authorized, pests pursuant to this section within thirty days after the agency receives the bill.
- 2- 4. A Each federal agency shall develop a management program plan for controlling or eradicating noxious weeds or, if authorized, pests on land the agency controls or over which the agency has under the agency's jurisdiction. If a federal agency does not control or set up a management program to the satisfaction of the weed control authority, the eradicate the noxious weeds and does not develop a management plan for controlling or eradicating the noxious weeds, the weed control office shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the commissioner and the county weed control authorities describing detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds or, if authorized, pests. The commissioner may specify the forms on which the federal agency report must be submitted.
- 3- 5. Upon being notified by a county weed board of the federal agency's failure to control or eradicate noxious weeds or, if authorized, pests, the commissioner may hold a public hearing under such conditions and terms as the commissioner determines advisable, to determine the reason for the failure or refusal.

SECTION 27. AMENDMENT. Section 63-01.1-14 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-14. Weed Noxious weed control enforcement responsibilities of other agencies. The state highway patrol, county sheriffs, and the truck regulatory division ~~shall~~, when requested to do so by a ~~local weed control officer or a weed control authority, shall cooperate with local weed control officers and the commissioner, a weed control authority and shall have the authority to~~ may enforce subsection 2 of section 63-01.1-12 ~~where if~~ machinery, commodities, or articles ~~are being moved on state and federal highways or on county or township roads and may be~~ are contributing to the dissemination of noxious weeds.

SECTION 28. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

Investigation by agriculture commissioner - Conflict of interest. If an individual who provided written notice of an alleged failure to eradicate or control noxious weeds believes that the matter has not been addressed satisfactorily by the weed board within twenty-one days from the date of the complaint, the individual may provide written notification to the local governing authority. If the individual who provided notice of an alleged failure to eradicate or control noxious weeds believes that the matter has not been addressed satisfactorily by the local governing authority within twenty-one days from the date of the notice to the local governing authority,

the individual may provide written notification to the agriculture commissioner. Upon receiving such notification, the agriculture commissioner shall investigate the matter. If the commissioner determines that a weed board has not addressed the matter satisfactorily within the twenty-one day period, the commissioner may act to enforce this chapter. A weed board may request that the agriculture commissioner investigate any complaint received by the board if the board determines that its ability to enforce this chapter is compromised because of a conflict of interest.

SECTION 29. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Pest control - Authorization.

1. The board of county commissioners, in consultation with the county weed board, may authorize the county weed board to control or eradicate pests on public lands within the county and to cooperate with landowners for the purpose of controlling or eradicating pests on private land within the county.
2. A county weed board that has been authorized to control or eradicate pests under this section may:
 - a. Expend funds made available from state or federal sources for pest control or eradication purposes;
 - b. Direct the county weed control officer to encourage landowners and occupants in the county to control or eradicate pests; and
 - c. Employ additional personnel to assist with pest control and eradication efforts under this section.

SECTION 30. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed control officer - Pest control or eradication. If a county weed board is authorized to control or eradicate pests under section 29 of this Act, the county weed control officer shall:

1. Cooperate with all control authorities, county extension agents, landowners, and others to further pest control or eradication under this chapter.
2. Become acquainted with the location of pests on all land within the county.
3. Encourage pest control or eradication by all landowners and land occupants within the county.
4. Investigate all complaints regarding pests received by any control authority.
5. Post or publish in official newspapers any notices the commissioner determines necessary to further pest control or eradication under this chapter.
6. Prepare reports as requested by the commissioner.

7. Attend area or statewide meetings called by the commissioner to further pest control or eradication under this chapter.

SECTION 31. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Pest control or eradication - Roads and highways.

The county weed board shall control or eradicate pests along county and township roads and highways within the county and any expenses incurred in the control or eradication must be paid from funds as provided in section 63-01.1-06.

SECTION 32. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Pest control - Authorization.

1. The governing body of a city, in consultation with the city weed board, may authorize the city weed board to control or eradicate pests on land within the corporate boundaries of the city and to cooperate with landowners for the purpose of controlling or eradicating pests on private land within the city.
2. A city weed board that has been authorized to control or eradicate pests under this section may:
 - a. Expend funds made available from state or federal sources for pest control or eradication purposes;
 - b. Direct the city weed control officer to encourage landowners and occupants in the city to control or eradicate pests; and
 - c. Employ additional personnel to assist with pest control and eradication efforts under this section.

SECTION 33. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed control officer - Pest control or eradication. If a city weed board is authorized to control or eradicate pests under section 32 of this Act, the city weed control officer shall:

1. Cooperate with all control authorities, county extension agents, landowners, and others to further pest control or eradication under this chapter.
2. Become acquainted with the location of pests on all land within the city.
3. Encourage pest control or eradication by all landowners and land occupants within the city.
4. Investigate all complaints regarding pests received by any control authority.
5. Post or publish in the official newspaper of the city any notices the commissioner determines necessary to further pest control or eradication under this chapter.

6. Prepare reports as requested by the commissioner.
7. Attend area or statewide meetings called by the commissioner to further pest control or eradication under this chapter.

SECTION 34. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Pest control or eradication - Roads and highways.

The city weed board shall control or eradicate pests along streets, roads, and highways within the city and any expenses incurred in the control or eradication must be paid from funds as provided in section 19 of this Act.

SECTION 35. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

Publicly owned land - Pest control or eradication.

1. The commissioner shall attempt to arrange a pest control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Except as provided in subsection 3, a county weed control officer shall attempt to arrange a pest control or eradication program with all political subdivisions owning or controlling public land within the county weed control officer's jurisdiction.
3. If a city has a pest control or eradication program, the city weed control officer shall attempt to arrange a pest control or eradication program with all political subdivisions owning or controlling public land within the corporate limits of the city.
4. Each state agency shall provide for the control or eradication of pests on any land within the agency's jurisdiction. If a state agency fails to control or eradicate pests on land under its jurisdiction, the weed board having jurisdiction over the area in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control or eradicate the pests. The state agency shall reimburse the weed board for expenses incurred in the control or eradication of pests within thirty days after the agency receives the bill.
5. Each federal agency shall develop a management plan for controlling or eradicating pests on land within the agency's jurisdiction. If a federal agency does not control or eradicate pests and does not develop a management plan for controlling or eradicating pests, the weed control officer shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the control authority detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the pests. The commissioner may specify the forms on which the federal agency report must be submitted.
6. Upon being notified by a weed board of a federal agency's failure to control or eradicate pests, the commissioner may hold a public hearing to determine the reason for the agency's failure.

SECTION 36. AMENDMENT. Section 63-01.1-15 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-15. Penalties.

1. A custom or commercial operator of tillage, seeding, and harvesting equipment who violates subsection 2 of section 63-01.1-12 is guilty of a class B misdemeanor. A control authority may institute necessary criminal actions under this subsection.
2. Persons failing to comply with the rules and notice provisions of this chapter are subject to a civil penalty not to exceed ~~fifty eighty~~ dollars per day for each day of violation, subject to a maximum penalty of ~~two four~~ thousand ~~five hundred~~ dollars per year. The accumulated penalties under this section are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 63-01.1-08.
3. All penalties collected pursuant to this section must be deposited with the treasurer of the political subdivision and credited to the weed control and eradication fund in the political subdivision in which the penalty originated. ~~Penalties collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed control fund in the political subdivision in which the penalty originated but dedicated for use by the county weed board to control pests.~~
4. The penalty may be adjudicated by ~~the courts~~ a court or by ~~the~~ a county or a city weed board after a hearing.
5. An aggrieved landowner may appeal the imposition of a penalty by ~~the~~ a county weed board to the board of county commissioners and may appeal the imposition of a penalty by a city weed board to the governing body of the city.

SECTION 37. AGRICULTURE COMMISSIONER - REPORTS TO LEGISLATIVE COUNCIL. In November 2005 and June 2006, the agriculture commissioner shall report to the legislative council all notifications and requests for assistance under section 28 of this Act. The reports must include the commissioner's response to each notification and request.

SECTION 38. REPEAL. Section 63-01.1-04.2 of the North Dakota Century Code is repealed.

Approved April 8, 2005
Filed April 12, 2005

WORKERS' COMPENSATION

CHAPTER 602

HOUSE BILL NO. 1122

(Industry, Business and Labor Committee)

(Representative Ruby)

(Senator Klein)

(At the request of Workforce Safety and Insurance)

WSI SUBROGATION AND BENEFIT REIMBURSEMENT

AN ACT to amend and reenact sections 65-01-09 and 65-05-05 of the North Dakota Century Code, relating to subrogation and lien rights of the organization and reimbursement of benefits paid by the organization; and to provide for application.

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~~ Organization subrogated when claim filed - Lien created.

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~~ organization 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~~ organization 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 organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid in compensation and benefits. The organization's subrogation interest or lien 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 organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, the ~~fund~~ organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the organization 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 and retain as its lien the full amount it has paid in compensation and benefits. Within sixty days after both the injured employee and the organization 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 organization 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 organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred ~~as the action progresses before recovery of damages.~~ If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. ~~When there is~~ After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:

1. ~~Twenty percent of the subrogation interest recovered for the organization when legal action is not commenced.~~
2. Twenty-five percent of the subrogation interest recovered for the organization ~~when action is commenced and settled~~ before judgment.
3. 2. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.

The above provisions as to costs of the action and attorney's fees ~~is~~ are effective only when the injured employee advises the organization 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 organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization'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's fees will be paid from the organization's subrogation interest and the organization's lien is the full amount of the damages recovered up to a maximum of the total amount it has paid. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the employee or the employee's dependents and upon the third person, the third person, the insurer of the third person, the employee or employee's dependents, and the attorney of the employee or employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the employee or the employee's dependents is not valid or effective against the lien. An action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.

SECTION 2. AMENDMENT. Section 65-05-05 of the North Dakota Century Code is amended and reenacted as follows:

65-05-05. Payments made to insured employees injured in course of employment and to their dependents. The organization shall disburse the fund for

the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;
2. Are employed by employers who are subject to this title; and
3. Have been injured in the course of their employment.

If an employee applies for benefits from another state for the same injury, the organization will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act, no further compensation shall be allowed under this title and the employee must reimburse the organization for the entire amount of benefits paid if the award covers the same time period already reimbursed by the organization.

SECTION 3. APPLICATION. This Act applies to all claims regardless of the date of injury.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 603

HOUSE BILL NO. 1199

(Representative Keiser)

WSI DIRECTOR APPOINTMENT

AN ACT to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to appointment of the workforce safety and insurance board of directors; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-03.1. Workforce safety and insurance board of directors - Appointment.

1. ~~After August 1, 2003, the~~ The board consists of eleven members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state ~~that~~ which maintain active accounts with the organization, 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, and at least one employer at large representative. Except for the employer at large representative, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
 - b. Three members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor.
 - c. One member is a member of the North Dakota medical association.
 - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms, except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. Board members may not serve more than three 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 board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor. 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. The governor shall select the replacement member for a departing nonorganized labor employee representative. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the board. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

SECTION 2. APPLICATION. This Act applies only to members appointed or reappointed to the board after the effective date of this Act.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 604

HOUSE BILL NO. 1125

(Representatives Carlson, Vigesaa)

(Senator Krebsbach)

(At the request of Workforce Safety and Insurance)

WSI PREMIUMS, EXPENSES, AND COVERAGE

AN ACT to amend and reenact sections 65-03-04, 65-04-01, 65-04-19.1, 65-04-19.3, 65-05-07.2, 65-07-02, and 65-07-03 of the North Dakota Century Code, relating to workforce safety and insurance annual establishment of minimum premium, premium discount and premium calculation programs, employer medical expense assessment incentives, elective coverage, and coverage for employer's children; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-03-04 of the North Dakota Century Code is amended and reenacted as follows:

65-03-04. Safety programs - Continuing appropriation. The organization shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. Any funds deposited in the workforce safety insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

SECTION 2. AMENDMENT. Section 65-04-01 of the North Dakota Century Code is amended and reenacted as follows:

65-04-01. Classification of employments - Premium rates - Requirements.

1. The organization shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of the classifications sufficiently high to provide for:
 - a. The payment of the expenses of administration of the organization;
 - b. The payment of compensation according to the provisions and schedules contained in this title; and
 - c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the organization shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.

3. Before the effective date of any premium rate change, including a change in the minimum premium, the organization shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the organization under this subsection.

SECTION 3. AMENDMENT. Section 65-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.1. Premium discount for implementation of preapproved risk management program. Any employer who implements or maintains risk management programs approved by the organization is entitled to a ~~five percent~~ discount in the annual premium the employer must pay to the organization for the year following the year in which the risk management programs are implemented or maintained. The organization may not apply the discount to an employer's premium unless the organization has approved the programs implemented by the employer.

SECTION 4. AMENDMENT. Section 65-04-19.3 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. Upon approval of its board of directors, the organization may create and implement ~~by emergency rulemaking~~ actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section ~~may be created or modified by emergency rulemaking~~ are not subject to title 28-32 and ~~must~~ may include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

SECTION 5. AMENDMENT. Section 65-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07.2. Payment to organization for certain claims. The employer shall reimburse the organization 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 organization for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If a claim for benefits is filed with the organization by midnight central time on the first business day following the workplace injury, the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed by submitting a form furnished by the organization or by another method designated by the organization. If a claim for benefits is filed with the organization more than fourteen days from the date the employer received notice of the workplace injury from the employee, the employer shall reimburse the organization for the first three hundred fifty dollars of medical expenses when the expenses are greater than three 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 organization, 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 organization under this section. Upon the organization's determination that the claim is compensable, the organization 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 organization within thirty days of notice by the organization, the organization 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 organization 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~~ Except as otherwise provided, if the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the organization 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 65-06.2-04 through 65-06.2-08 are not subject to this section.

SECTION 6. AMENDMENT. Section 65-07-02 of the North Dakota Century Code is amended and reenacted as follows:

65-07-02. Organization may refuse to contract for coverage. The organization, on receipt of an application for insurance, shall determine whether ~~or not~~ the applicant is a good insurance risk and may deny such special contract if ~~in its opinion the organization determines~~ it is in the best interests of the ~~fund~~ organization to do so.

SECTION 7. 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 organization enters ~~into~~ a contract for insurance under this chapter, the premium for ~~such~~ the protection must 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 b of subsection 5 of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, ~~an employer's child over the age of seventeen,~~ or a self-employed person. 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 organization for employees in the same class of industry that the volunteer organization is engaged.
3. Actual wages paid to a clerk, an assessor, a treasurer, or a 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.
4. Actual wages paid to an employer's child if that child is under the age of ~~eighteen~~ twenty-two.

CHAPTER 605

HOUSE BILL NO. 1531

(Representatives Keiser, Berg, Carlson, N. Johnson, Wald)
(Approved by the Delayed Bills Committee)

WSI RESERVE BALANCE AND DISCOUNT RATE

AN ACT to amend and reenact section 65-04-02 of the North Dakota Century Code, relating to workforce safety and insurance fund reserve balance and rate of discount.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is amended and reenacted as follows:

65-04-02. Reserves - Surplus. The organization shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The discount rate used in evaluating the financial reserves may not exceed six percent. The level of financial reserves plus surplus must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve. The independent annual financial audit of the organization must report the organization's financial reserves.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 606

HOUSE BILL NO. 1336

(Representatives Kasper, Clark, Keiser, Koppelman)
(Senators Espgaard, Klein)

ZIP CODE REPORTING

AN ACT to amend and reenact section 65-04-15 and subsection 4 of section 65-04-33 of the North Dakota Century Code, relating to reporting of employer and employee zip codes for commerce purposes; and to repeal section 54-60-08 of the North Dakota Century Code, relating to publishing of employer and employee zip codes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information. The information contained in an employer's file is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties; and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, or delinquent. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title or except upon written authorization by the employer for a specified purpose. ~~At least annually, the organization shall furnish the department of commerce with employers' and employees' nine-digit zip codes.~~ Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the

duties of those officials, the organization shall provide any relevant information to those officials for the purpose of administering their duties. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to 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.

³⁰⁸ **SECTION 2. AMENDMENT.** Subsection 4 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer who fails or refuses to furnish to the organization the annual payroll report and estimate or who fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of two thousand dollars. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, ~~employer's and employees' nine-digit zip codes,~~ and other information required by the organization under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the two thousand dollar penalty set forth above. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

SECTION 3. REPEAL. Section 54-60-08 of the North Dakota Century Code is repealed.

Approved March 22, 2005

Filed March 22, 2005

³⁰⁸ Section 65-04-33 was also amended by section 3 of House Bill No. 1123, chapter 607.

CHAPTER 607

HOUSE BILL NO. 1123

(Representatives Bernstein, Wald, Kasper)
(At the request of Workforce Safety and Insurance)

WSI PREMIUMS, COVERAGE, AND CERTIFICATION

AN ACT to amend and reenact sections 65-04-20 and 65-04-22, subsection 3 of section 65-04-33, subsection 4 of section 65-08-01, and subsection 2 of section 65-09-01 of the North Dakota Century Code, relating to premium installment payments, authority to decline coverage and negotiate penalties, extraterritorial coverage, and certification by contractor of independent contractor status.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - Interest required. ~~If the amount of premium billed to an~~ An employer on a premium billing statement is greater than the minimum premium, the employer may pay the excess of the minimum annual premium in installments.

Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties apply which are provided in this chapter apply sections 65-04-22 and 65-04-33.

SECTION 2. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default. ~~The organization, by its proper order, and by an endorsement and notification to that effect upon the premium billing statement sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the organization for the payment of the premium. In the absence of such an order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.~~

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer to be uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section and the premium delinquency remains unresolved.

³⁰⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The organization may reduce these penalties. However, the amount due from an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured, unless authorized by the director. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

SECTION 4. 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 workforce safety and insurance 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 ~~workforce safety and workers' compensation~~ insurance law of the other state. An employment has significant contacts with this state when:
 - a. ~~The~~ Any 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, Twenty-five percent of the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars is payable to employees for services rendered in this state.~~

³⁰⁹ Section 65-04-33 was also amended by section 2 of House Bill No. 1336, chapter 606.

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 organization shall issue a decision on a claim, as specified in sections 65-01-16 and 65-02-08, do not begin to run for claims filed under this section until the first date the organization may begin to process the claim as set forth in section 65-05-05.

SECTION 5. AMENDMENT. Subsection 2 of section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The organization ~~shall~~ may establish a procedure ~~by which a person may apply to the organization for a determination of~~ determine whether that a person is an employer required to obtain workforce safety and insurance workers' compensation coverage under this title and to require a person asserting independent contractor status to file a statement annually with the organization certifying that status. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The organization retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 608

SENATE BILL NO. 2351

(Senators Robinson, Cook, Kringstad)
(Representatives Amerman, N. Johnson, Porter)

WORKERS' COMPENSATION ADDITIONAL BENEFITS

AN ACT to amend and reenact section 65-05-09.4 of the North Dakota Century Code, relating to workers' compensation additional benefits for retired injured employees; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.4 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.4. Additional benefit payable. If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the organization 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 organization 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~~ before 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 organization 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. APPLICATION OF ACT. This Act only applies to additional benefit payments made pursuant to section 65-05-09.4 which are scheduled to be paid on or after the effective date of this Act.

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 609

HOUSE BILL NO. 1506

(Representatives Charging, Maragos)
(Senators Hacker, Kringstad, Warner)

NONDEPENDENT CHILD WSI PAYMENTS

AN ACT to amend and reenact section 65-05-19 of the North Dakota Century Code, relating to providing nondependency payments in certain workforce safety and insurance cases; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-19 of the North Dakota Century Code is amended and reenacted as follows:

65-05-19. Providing nondependency payments in certain cases. If the death of an employee with no surviving spouse or dependent children results from an injury within the time specified in section 65-05-16, the organization shall pay a lump sum of two thousand dollars equal to five percent of the maximum total death benefits specified in subsection 1 of section 65-05-17 to the surviving nondependent child, or in equal shares to the surviving nondependent children. In the event that no nondependent child is living, the sum provided herein shall under this section must be paid in equal shares to the surviving parents of the deceased, and if there are none, then to the deceased employee's living brothers and sisters. If there are no living brothers or sisters, the sum herein shall under this section must be paid in equal shares to the surviving grandparents, if any, of the deceased employee.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to all recipients beginning November 29, 2004.

Approved March 22, 2005
Filed March 22, 2005

CHAPTER 610

HOUSE BILL NO. 1120

(Representatives Wald, Kasper)

(Senator Dever)

(At the request of Workforce Safety and Insurance)

WSI SOCIAL SECURITY NUMBERS AND DEFINITIONS

AN ACT to create and enact a new subsection to section 65-05-32 of the North Dakota Century Code, relating to use of social security numbers by workforce safety and insurance; to amend and reenact sections 65-01-02, 65-01-17, and 65-05-20.1, subsection 1 of section 65-05-25, and section 65-05-30 of the North Dakota Century Code, relating to workforce safety and insurance definitions of child and grandchild, the agricultural employment exemption, scholarship fund distribution rules, lump sum settlements, and communications regarding medical treatment; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁰ **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.
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.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest

³¹⁰ Section 65-01-02 was also amended by section 1 of House Bill No. 1171, chapter 611, and section 6 of House Bill No. 1410, chapter 235.

dollar. If 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, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax year years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
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.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" 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 that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, 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

who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) 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. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and 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, except that the bureau may pay for

- preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
 - (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an 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.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (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.
 - (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
 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.
 13. "Director" means the director of the organization.

14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test.
 - 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 workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of 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 of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (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 organization for the payment of premiums which are not paid by a subcontractor or independent contractor.
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.
- 18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
- 19. "Fund" means the workforce safety and insurance fund.
- 20. ~~"Grandchild" and the terms defined in subsections 8 and 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.~~
- 24. "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.
- ~~22.~~ 21. "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.
- ~~23.~~ 22. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
- ~~24.~~ 23. "Parent" includes a stepparent and a parent by adoption.
- ~~25.~~ 24. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.

- ~~26-~~ 25. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:
- Nature of injury.
 - Degree of physical impairment.
 - Education.
 - Work history.
 - Vocational rehabilitation potential.
- ~~27-~~ 26. "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-~~ 27. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- ~~29-~~ 28. "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-~~ 29. "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 organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~34-~~ 30. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-01-17 of the North Dakota Century Code is amended and reenacted as follows:

65-01-17. Agricultural employment exemption - Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under ~~subsection 24 of~~ section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

SECTION 3. AMENDMENT. Section 65-05-20.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. Scholarship fund - Rules. The organization 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. The organization may also grant scholarships to injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances as determined by the organization. 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~~ three hundred fifty thousand dollars. The maximum amount payable on behalf of an applicant is ~~three~~ four thousand dollars per year for no more than five years, except that scholarships awarded on the basis of exceptional circumstances may not exceed ten thousand dollars per year for more than five years, per applicant. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 4. AMENDMENT. Subsection 1 of section 65-05-25 of the North Dakota Century Code is amended and reenacted as follows:

1. If an employee is determined to be permanently and totally disabled, the organization may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The organization may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return ~~to work~~ as a productive member of society.

SECTION 5. AMENDMENT. Section 65-05-30 of the North Dakota Century Code is amended and reenacted as follows:

65-05-30. Filing of claim constitutes consent to use of information received by doctor. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by it or to which it is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any doctor, hospital, or clinic in the course of any examination or treatment of the claimant. The filing of such claim authorizes a doctor, hospital, or clinic to disclose any such information to the organization ~~or to~~ its representative, or to the employer, except that any such information directly disclosed to the employer must be relevant to the employee's work injury or to return to work issues. No physician or health care provider furnishing such reports or records incurs any liability as a result.

SECTION 6. A new subsection to section 65-05-32 of the North Dakota Century Code is created and enacted as follows:

The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.

SECTION 7. APPLICATION. Sections 5 and 6 of this Act apply to all claims, regardless of the date of injury. Sections 1 and 4 of this Act apply to all claims filed after July 31, 2005.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 611

HOUSE BILL NO. 1171

(Representative N. Johnson)

(Senator Klein)

(At the request of Workforce Safety and Insurance)

WORKERS' COMPENSATION DISABILITY AND REHABILITATION

AN ACT to amend and reenact sections 65-01-02, 65-05.1-01, 65-05.1-02.1, 65-05.1-04, and 65-05.1-06.1 of the North Dakota Century Code, relating to the definition of permanent total disability and temporary total disability, vocational rehabilitation options, eligibility for partial disability benefits, elective vocational rehabilitation retraining, and vocational rehabilitation noncompliance appeals for workforce safety and insurance purposes; to provide an effective date; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹¹ **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.
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.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are not fixed by

³¹¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1120, chapter 610, and section 6 of House Bill No. 1410, chapter 235.

the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the net earnings reported the 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.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
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.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" 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 that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, 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 does not include a married child unless actually dependent.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
- a. The term includes:
- (1) 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. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and 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, except that the bureau may pay for preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.
 - (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an 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.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (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.
 - (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
- 11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
 - 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.
 - 13. "Director" means the director of the organization.
 - 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 - 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
 - 16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test.

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 workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of 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 of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (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 organization for the payment of premiums which are not paid by a subcontractor or independent contractor.
- 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.

18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Grandchild" and the terms defined in subsections 8 and 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.
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.
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.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.
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 and includes disfigurement resulting from an injury.
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 disability that is the direct result of a compensable injury that prevents an employee from

performing any work and results from any one of the following conditions:

- a. Total and permanent loss of sight of both eyes;
- b. Loss of both legs or loss of both feet at or above the ankle;
- c. Loss of both arms or loss of both hands at or above the wrist;
- d. Loss of any two of the members or faculties in subdivision a, b, or c;
- e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
- f. Third-degree burns that cover at least forty percent of the body and require grafting;
- g. A medically documented traumatic brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 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 occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 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. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.

31. "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 organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

~~34.~~ 32. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. The purpose of this chapter is to ensure that injured employees covered by this title receive services, so far as possible, necessary to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services, including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practicable and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 which meets this income test set out above.
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 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~~ Retraining of one hundred four weeks or less.
 - j. ~~Self-employment.~~
5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or 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 organization 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 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) That meets the employee's functional capacities; and
 - (2) For which the employee meets the qualifications to compete; and.
 - ~~(3)~~ 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 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 organization shall award partial disability based on retained earnings capacity calculated under this section.
 - c. For purposes of calculating partial disability based on a retained earnings capacity, an employee is presumed to be capable of earning the greater of the state's hourly minimum wage times the hours of release based on a valid functional capacities examination or the wages payable within the appropriate labor market. This presumption is rebuttable only upon a finding of clear and convincing medical and vocational evidence to the contrary. If the presumption is successfully rebutted, the employee may receive partial disability benefits based on a retained earnings capacity of zero.
- 7. The income test in subsection 3 must 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 organization and the employee agree to waive the income test and the priority options.
- 8. Vocational rehabilitation services may be initiated by:
 - a. The organization on its own motion; or
 - b. The employee 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. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.
- 10. If retraining is the first appropriate vocational rehabilitation option identified for an employee, the employee shall notify the organization of the acceptance of the retraining option on a form provided by the organization within thirty days from the date the employee receives notice of eligibility for retraining. If the employee fails to notify the organization of the acceptance of the retraining option within the thirty-day period, the organization shall calculate a retained earnings capacity as provided in subdivision c of subsection 6. A vocational rehabilitation allowance does not accrue as weeks of temporary total disability as defined in section 65-01-02 if the employee successfully completes a retraining program approved by the organization. If the employee fails to successfully complete a retraining program approved by the organization, the vocational rehabilitation allowance paid accrues against the maximum number of weeks of temporary total disability allowed pursuant to section 65-01-02. If an employee attempts and withdraws from an approved retraining program within the first twenty weeks following commencement of the retraining program, the employee, upon request, may receive no more than one hundred

eighty-two weeks of temporary partial disability benefits calculated pursuant to subdivision c of subsection 6.

SECTION 3. AMENDMENT. Section 65-05.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02.1. Vocational consultant's report. The vocational consultant shall review all records, statements, and other pertinent information and prepare a report to the organization and employee.

1. The report must:
 - a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
 - b. Contain findings of why a higher listed priority, if any, is not appropriate.
2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:
 - a. Identify jobs in the local or statewide job pool and the employee's anticipated earnings from each job; or
 - b. ~~Describe an appropriate on-the-job training program, and the employee's anticipated earnings;~~
 - c. Describe an appropriate ~~short-term or long-term~~ retraining program, the employment opportunities anticipated upon the employee's completion of the program, and the employee's anticipated earnings; or
 - d. ~~Describe the employee's potential for specific self-employment, limitations the employee might have in such a self-employment, any assistance necessary, and the employee's anticipated earnings.~~
3. The vocational consultant's report is due within sixty days from the date the vocational assessment is performed under this chapter. However, if the vocational consultant determines that ~~short-term or long-term training~~ retraining options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the vocational assessment to allow the employee to assist in formulating the choice among the qualified training programs.

SECTION 4. 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 organization under subdivision b of subsection 8 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 organization 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 organization or the vocational consultant. If the employee is noncompliant with this subsection, the organization 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, 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, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 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 organization shall reevaluate the employee's vocational rehabilitation claim.
5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is ~~short-term or long-term training~~ retraining, 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 organization. A qualified training program is a rehabilitation plan that meets the criteria of this title, is the approved option of the rehabilitation consultant, and commences within a reasonable period of time such as the next quarter or semester. The organization and the employee, by agreement, may waive the income test applicable under this subsection.
6. If, without good cause, the injured employee 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 organization 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 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 thirty days. In all cases of noncompliance by the employee, the organization, ~~by administrative order~~, shall discontinue disability and vocational rehabilitation benefits. If, ~~after issuance of the order~~, the period of noncompliance continues for thirty days following the date benefits are discontinued, or a second instance of noncompliance occurs without good cause, the organization may not pay any further disability or vocational rehabilitation benefits, regardless of whether the employee sustained a significant change in medical condition due to the work injury.

SECTION 5. 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 receiving the final vocational consultant's report, the organization shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to 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 disability benefits, the organization 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 organization 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 organization. Catastrophic injury includes:
 - (1) Paraplegia; 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 organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization 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. If the employee successfully concludes the rehabilitation program, the organization 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.
- f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two ~~months~~ months' disability benefit, to assist the employee with work search.
- 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 organization may waive this section in cases of catastrophic injury defined by subdivision c of ~~subsection 2~~.
- 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 organization, 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.

- (2) Beginning the date at which the employee acquires substantial gainful employment, 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, or the employee's actual postinjury wage earnings, whichever is higher.
 - (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
 - (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
 - (5) For purposes of paragraphs 1 and 2, "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.
 - (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, 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 organization shall pay the employee a disability benefit throughout the duration of the on-the-job training program. Upon completion of the training program, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, 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.~~

SECTION 6. EFFECTIVE DATE. Sections 1 and 2 of this Act become effective January 1, 2006.

SECTION 7. APPLICATION. This Act applies to all claims filed on or after the effective dates of this Act.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 612

HOUSE BILL NO. 1491

(Representatives Berg, Boucher, Ekstrom, Keiser)
(Senators O'Connell, Stenehjem)

WSI REVOLVING LOAN FUND

AN ACT to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to the establishment of a workforce safety and insurance educational revolving loan fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

Workforce safety and insurance educational revolving loan fund - Continuing appropriation.

1. The organization may establish a revolving loan fund to provide a low-interest loan to an individual who has suffered a compensable injury. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years at an interest rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the board's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The board, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

VETOED MEASURES

CHAPTER 613

SENATE BILL NO. 2278

(Senator Klein)

(Representative Nottestad)

RATE STABILITY PLANS

AN ACT to create and enact five new sections to chapter 49-05 of the North Dakota Century Code, relating to public utility rate stability plans.

VETO

March 30, 2005

The Honorable Jack Dalrymple
President
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Dalrymple:

I hereby veto SB 2278 and return it to the Senate for reconsideration.

SB 2278 would allow investor owned utilities to collect higher electric rates from North Dakota consumers to pay for a power plant during construction before the plant provides any power to consumers. This is a significant benefit to the utility company as it recoups its costs and collects a return on investment during the construction period that could range from six to eight years. Because SB 2278 provides this benefit to a company even for plants that are built outside of North Dakota, I have vetoed this bill.

I believe that this legislation should have been amended to apply specifically to plants built within North Dakota. This amendment was offered in committee, but it was not adopted. When new plants are built in North Dakota, our state receives huge benefits in quality jobs, new wealth and low cost power. Also, new plants in North Dakota are vital to help develop more transmission for the growth of wind energy. Without the amendment, this bill works against the best interests of our state by providing an incentive for plants built in another state.

Proponents of this bill argue that being allowed to charge consumers for a plant during construction, referred to as the rate stabilization method, may ultimately result in lower costs to the consumer compared to the conventional approach. But in those cases in which a company can actually show that consumers will benefit from the rate stabilization treatment, the PSC already has the authority to provide it under existing law.

Further, consumers may not benefit from rate stabilization treatment. Power plants may take from six to eight years to build. It may take an individual or business consumer many years to recoup those increased payments and for those who move from a particular service area or the elderly, for example, there may never be a corresponding benefit.

If North Dakota is going to enact a law to limit the discretion of the Public Service Commission in making its determination as to the best rate treatment, which this bill does, there must be a clear benefit to the North Dakota citizens in return.

In exchange for the economic incentive provided to the utility company, North Dakotans should receive the economic benefit gained from increased employment and new wealth provided by new plants, transmission or energy related facilities. I cannot sign this legislation, which does not contain these assurances for North Dakota consumers and which, in fact, may be counterproductive to North Dakota's effort to develop energy resources within our state.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate stability plan for phasein of electric rate increases. Notwithstanding any other provisions of this title, a public utility planning the construction of an energy conversion facility, a major capital addition to an existing energy conversion facility in which the public utility has an ownership interest, a new transmission facility, a new renewable energy facility, or a new power purchase that is expected to have a material impact on rates, referred to collectively as an electric resource addition, may apply to the commission for a rate stability plan providing for the phasein of rate increases before the commercial operation of the electric resource addition. The commission may order that expenses associated with investigating the application made by the public utility for a rate stability plan be paid by the public utility in accordance with section 49-02-02. A rate stability plan approved by the commission may provide for the following:

1. Rate increases to be incrementally phased in before commercial operation of the electric resource addition; and
2. Any other conditions that benefit the public interest and may be imposed by the commission consistent with its findings in section 2 of this Act.

SECTION 2. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Approval of rate stability plan. The commission may approve a rate stability plan as provided in section 1 of this Act if:

1. The public utility applies for a rate stability plan before commencement of construction or purchase of an electric resource addition;

2. The public utility files with its application a full cost-of-service analysis as required for a general rate increase, including a projection of costs and revenues to the date of the anticipated commercial operation of the electric resource addition;
3. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
4. The commission finds that the rate stability plan serves the public need for adequate, efficient, and reasonable service; rate stability; financial stability of the public utility; reasonable capital costs; just and reasonable rates; a fair rate of return; and other considerations that benefit the public interest.

SECTION 3. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Annual review of rate stability plan. A rate stability plan approved by the commission involving an electric resource addition is subject to annual review until commercial operation of the resource addition. The public utility shall file annually an abbreviated cost-of-service analysis showing revenues, costs, and revenue requirements and a report of the progress of the construction showing accumulative construction costs and updated cost projections to complete the construction.

SECTION 4. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Filing of general rate case before commercial operation. Before commercial operation of the electric resource addition, a public utility shall make a general rate case filing with a full cost-of-service analysis, including the electric resource addition, in accordance with section 49-05-05. The commission shall adjust the public utility's rates to be charged by the public utility commencing with commercial operation of the electric resource addition in accordance with section 49-05-05.

SECTION 5. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate applications upon nonapproval of rate stability plan. If the commission does not approve a rate stability plan submitted pursuant to section 1 of this Act, nothing precludes a public utility from requesting a change in rates as otherwise authorized under this chapter.

Disapproved March 30, 2005

Filed March 30, 2005

CHAPTER 614**SENATE BILL NO. 2023**

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments; to provide an appropriation for state facility energy improvement capital projects of various state departments and institutions; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to provide a statement of legislative intent; to provide for a legislative council study; to provide an appropriation; and to amend and reenact section 48-01.1-09 of the North Dakota Century Code, relating to the use of a construction manager.

VETO

April 26, 2005

The Honorable Jack Dalrymple
President of the Senate
Senate Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of SB 2023

Dear President Dalrymple:

I have signed SB 2023, but disapprove and veto Section 6 of the bill.

Section 6 would have appropriated funds to study the archival storage requirements of the North Dakota Heritage Center, as an alternative to actually funding a facility for expanded storage.

The funding of the expanded storage facility at the Heritage Center was authorized in Section 1 of this bill, making a study unnecessary.

Sincerely,

John Hoeven
Governor

Disapproved April 26, 2005
Filed May 4, 2005

NOTE: For the full text of Senate Bill No. 2023, including section 6, see chapter 51.

CHAPTER 615

SENATE BILL NO. 2174

(Senators Krebsbach, J. Lee)
(Representatives Hawken, Rennerfeldt)

ESCROW ACCOUNT EXCESS AMOUNTS

AN ACT to amend and reenact subsection 2 of section 47-10.2-01 of the North Dakota Century Code, relating to escrow account excess amounts.

VETO

April 26, 2005

The Honorable Jack Dalrymple
President
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Dalrymple:

I have vetoed SB 2174 and return it unsigned.

Current law provides that companies that service secondary mortgages may require an escrow account to be maintained in an amount equal to "three hundred dollars **plus** the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year." [Emphasis added]. Section 47-10.2-01, North Dakota Century Code. Any amount in excess of this stated amount must be returned to the borrower upon demand, and failure to do so may result in a penalty of five hundred dollars, actual damages, costs and attorneys fees. Section 47-10.2-04, North Dakota Century Code.

Current law thus provides a "cushion" of three hundred dollars that may be held in escrow **in addition** to the amount necessary to make the annual payments of taxes, special assessments and insurance.

From the minutes and testimony presented in support of SB 2174, the intent of this legislation is to change the cushion that may be held in such escrow accounts from a flat dollar amount of three hundred dollars to one-twelfth, or one month's share, of the total annual payments for taxes, special assessments and insurance.

However, SB 2174 does not accomplish this intent. It states in its entirety that "any amount in an escrow account in excess of one-twelfth of the estimated total annual payments from the account" is defined as an "excess amount". It does not state that this is **in addition to** the amount required to make the total annual payments for taxes, special assessments and insurance.

Thus, what was meant to be the cushion is now the total amount that may be held in such escrow accounts. Clearly, this would defeat the purpose of an escrow account, which is to accumulate the amount needed to pay annual taxes, special assessments and insurance.

Because SB 2174 does not accomplish its intended purpose, and would create confusion in the marketplace, I have vetoed the legislation.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of ~~three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ one-twelfth of the estimated total annual payments from the account.

Disapproved April 26, 2005
Filed April 26, 2005

CHAPTER 616**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 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 create and enact two new sections to House Bill No. 1286, as approved by the fifty-ninth legislative assembly, and a new section to Senate Bill No. 2012, as approved by the fifty-ninth legislative assembly, relating to open records requests and to interpretation of provisions relating to refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 4-01-21, 15.1-02-02, 15.1-06-06, 26.1-01-09, 27-02-02, 27-05-03, 49-01-05, 54-03-20, 54-09-05, 54-10-10, 54-11-13, 54-12-11, 54-44.1-06, 54-44.1-06.1, 57-01-04, and 57-40.6-02 of the North Dakota Century Code and section 5 of House Bill No. 1518, section 12 of Senate Bill No. 2015, and section 20 of House Bill No. 1043, as approved by the fifty-ninth legislative assembly, relating to salaries of elected officials, school calendars, lodging reimbursement for members of the legislative assembly, preparation of the budget data, voter approval of imposition of fees for emergency services communication systems, the state wheat commission levy, a legislative council study of the department of corrections and rehabilitation, and the effective date of streamlined sales tax agreement complying amendments; to repeal section 9 of Senate Bill No. 2015, as approved by the fifty-ninth legislative assembly, relating to composite schedules for teacher salaries; to provide for a legislative council study; to provide legislative intent; and to declare an emergency.

VETO

May 4, 2005

The Honorable Matt Klein
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

RE: Item veto of Sections 22 and 23 in HB 1015

Dear Speaker Klein:

I have signed HB 1015, but veto Sections 22 and 23 of the bill.

Providing a budget and recommended appropriations to fund that budget on a biennial basis is a constitutional duty of the executive branch of government. The legislature can neither add to nor diminish that constitutional duty. This bill attempts to tell the executive branch what it must include in its budget.

If enacted into law, Section 22 would require the executive budget to include recommendations as to expenditures in future biennia. Essentially, this provision would require that the executive budget include appropriation recommendations for the next three biennia, which is neither reasonable nor practical.

While we are willing to, and, in fact, do engage in a process of projecting future expenditures with the legislature during the legislative session, it is not appropriate for the legislature to direct the budget recommendations.

Section 22 also interferes with the constitutional obligation of the executive branch to recommend appropriation legislation, in essence, to recommend its executive budget.

It requires that the appropriation bills submitted by the executive be the legislatively approved budget from the prior biennium. Any executive recommendations, more or less, could only be submitted subsequently as amendments to the legislative budget.

Section 23 contains similar restrictions with regard to the executive branch recommendations for capital projects within the capital construction bill and, for the same reasons, is flawed.

For the reasons stated, I have signed HB 1015, but have vetoed Sections 22 and 23 of the bill.

Sincerely,

John Hoeven
Governor

Disapproved May 4, 2005
Filed May 4, 2005

NOTE: For the full text of House Bill No. 1015, including sections 22 and 23, see chapter 15.

CHAPTER 617**HOUSE BILL NO. 1301**

(Representatives Monson, Carlson, Glassheim, Skarphol)

BUDGET DATA BONDING INFORMATION

AN ACT to create and enact subsection 10 to section 54-44.1-06 of the North Dakota Century Code, relating to requiring bonding information in the budget data contents; and to amend and reenact section 54-44.1-08 of the North Dakota Century Code, relating to budget reports to the legislative assembly.

VETO

May 4, 2005

The Honorable Matt Klein
Speaker
ND House of Representatives
State Capitol
Bismarck, ND 58505

RE: HB 1301

Dear Mr. Speaker:

I hereby veto HB 1301 and return it unsigned.

If enacted into law, HB 1301 would require that a detailed report of outstanding bonds and bonding authorizations be included in the executive budget recommendation.

This same information is already provided to the legislature in the Comprehensive Annual Financial Report issued by the Office of Management and Budget. Adding it to the executive budget recommendation is duplicative and not part of the budget recommendation. This makes the executive budget recommendation more difficult to use and understand.

Because the requirement is redundant, I veto HB 1301.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 10 to section 54-44.1-06 of the North Dakota Century Code is created and enacted as follows:

10. A detailed report on outstanding bonds and on all authorizations for issuing bonds by state agencies and institutions included in the executive budget, including the proposed purposes, amounts to finance, anticipated proceeds, anticipated repayment terms, the responsibility of the state to repay the bonds, and sources of funds for repayments.

SECTION 2. AMENDMENT. Section 54-44.1-08 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-08. Budget report - Contents - When submitted to legislative assembly. The official budget report must be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly. Such report is not a third-class item under section 46-02-05. The budget director shall provide for the duplication or other satisfactory reproduction or printing of the official budget report, so as to ensure delivery of same as provided in this section. Such reports must contain the budget and revenue proposals recommended by the governor and the information required in subsections 1, 2, 3, 5, ~~and 6,~~ and 10 of section 54-44.1-06 and all other data and information as the governor shall decide. The budget director shall make available any and all information regarding budget data to the governor, the legislative assembly and its designees, legislators, and to the governor-elect as may be requested. The governor may present any additional budget information in any manner to the legislative assembly as the governor may desire.

Disapproved May 4, 2005

Filed May 4, 2005

CHAPTER 618**SENATE BILL NO. 2012**

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

DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to create and enact a new section to chapter 24-01, section 24-02-40.1, a new section to chapter 24-08, and section 57-43.1-03.2 of the North Dakota Century Code, relating to the highway performance classification plan, grant or revenue anticipation financing by the department of transportation, naming of the liberty memorial bridge, and refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 24-01-03, 24-01-51, 39-04-19, 57-40.3-10, 57-43.1-02, and 57-43.2-02 of the North Dakota Century Code, relating to highway and bridge maintenance, haying of no-mow areas, motor vehicle registration fees, motor vehicle excise tax revenue, and motor vehicle fuels and special fuels tax rates; to repeal section 39-04-39.5 of the North Dakota Century Code, relating to allocation of motor vehicle registration fees; and to provide an effective date; and to provide a contingent expiration date.

VETO

May 4, 2005

The Honorable Jack Dalrymple
President of the Senate
Senate Chambers
State Capitol
Bismarck, ND 58505

RE: Item Veto of Section 11 in SB 2012

Dear President Dalrymple:

I have signed SB 2012, the appropriation bill for the Department of Transportation, but disapprove and veto Section 11 of the bill.

Section 11 diverts motor vehicle excise taxes from the general fund to another fund before we have determined the revenue needs for future biennia.

This is particularly important because the legislature did not provide access to reserve funds in the budget stabilization fund should the \$10 million ending fund balance be inadequate to meet the state's revenue needs.

This diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements.

For these reasons, I disapprove and veto Section 11 of SB 2012.

Sincerely,

John Hoeven
Governor

Disapproved May 4, 2005
Filed May 4, 2005

NOTE: For the full text of Senate Bill No. 2012, including section 11, see chapter 40.

INITIATED MEASURE APPROVED

CHAPTER 619

DEFINITION OF MARRIAGE

This initiated measure would add a new section to Article XI of the Constitution of North Dakota defining marriage as a legal union between a man and a woman and providing that no other domestic union may be given the same legal effect.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to Article XI of the Constitution of North Dakota is created and enacted as follows:

Marriage consists only of the legal union between a man and a woman. No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

Approved November 2, 2004

223,572 to 81,716

NOTE: This was measure No. 1 on the general election ballot.

CONSTITUTIONAL AMENDMENT APPROVED

CHAPTER 620

HOUSE CONCURRENT RESOLUTION NO. 3069

(Representatives Carlson, Belter, Devlin)

(Senators Flakoll, O'Connell, Wardner)

INITIATIVE MEASURE FISCAL IMPACT

A concurrent resolution for the amendment of section 2 of article III of the Constitution of North Dakota, relating to granting the legislative assembly the authority to provide a procedure for determining the fiscal impact of initiative measures.

STATEMENT OF INTENT

This measure authorizes the legislative assembly to provide for by law a procedure for determining the fiscal impact of initiative measures.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 2 of article III 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 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. A petition to initiate or to refer a measure ~~shall~~ must be presented to the secretary of state for approval as to form. A request for approval ~~shall~~ must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom ~~shall~~ must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

Approved June 8, 2004

54,048 to 23,812

NOTE: This was measure No. 2 on the 2004 primary election ballot.

CONSTITUTIONAL AMENDMENT DISAPPROVED

CHAPTER 621

SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Krebsbach, Tollefson)

(Representative Kretschmar)

CORPORATION VOTING AND RIGHTS

A concurrent resolution for the amendment of sections 6 and 9 of article XII of the Constitution of North Dakota, relating to cumulative voting and preemptive rights of corporate shareholders.

STATEMENT OF INTENT

This amendment would provide the same flexibility to all corporations in elections of their directors as is now enjoyed by cooperative associations only and would remove the requirement that existing stockholders consent to the issuance of additional stock.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to sections 6 and 9 of article XII 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 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. In all elections for directors ~~or managers~~ of a corporation, each member or shareholder may cast the whole number of ~~his~~ the votes of the member or shareholder for one candidate, or distribute them upon two or more candidates, as ~~he the member or shareholder~~ he the member or shareholder may prefer, provided, ~~any cooperative~~ a corporation may adopt bylaws limiting the voting power of its ~~stockholders~~ members or shareholders.

SECTION 2. AMENDMENT. Section 9 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. ~~No~~ A corporation ~~shall~~ may not issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness ~~shall be~~ is void. The stock and indebtedness of corporations ~~shall~~ may not be increased except in pursuance of general law; ~~not~~ without the consent of the persons holding the larger amount in value of the stock first obtained.

Disapproved June 8, 2004

31,462 to 44,039

NOTE: This was measure No. 1 on the 2004 primary election ballot.

CONSTITUTIONAL AMENDMENTS PROPOSED

CHAPTER 622

SENATE CONCURRENT RESOLUTION NO. 4012

(Senators Mathern, Triplett)

(Representative DeKrey)

STATE MILITIA

A concurrent resolution for the amendment of section 16 of article XI of the Constitution of North Dakota, relating to the definition of this state's militia; and to provide an effective date.

STATEMENT OF INTENT

This measure defines reserve and active militia and removes obsolete language in regard to age and gender in the reserve militia and removes residency requirements for membership in the active militia that is defined as the National Guard of North Dakota.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 16 of article XI 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 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

Section 16. The reserve militia of this state shall consist ~~consists~~ of all able-bodied ~~male persons~~ individuals eighteen years of age and older ~~residing in the state, between the ages of eighteen and forty-five years, except such as may be unless~~ exempted by the laws of the United States or of this state. ~~Persons~~ The active militia is the national guard of this state and consists of individuals who volunteer and are accepted unless exempted by the laws of the United States or of this state. An individual whose religious tenets or conscientious scruples forbid them that individual to bear arms shall ~~may~~ not be compelled to do so in times of peace, but that individual shall pay an equivalent for a personal service.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on August 1, 2006.

Filed April 7, 2005

NOTE: This will be measure No. 1 on the 2006 primary election ballot.

CHAPTER 623

HOUSE CONCURRENT RESOLUTION NO. 3055

(Representatives N. Johnson, Ekstrom, Keiser)

(Senators Klein, Krebsbach, Triplett)

CORPORATION VOTING AND REGULATION

A concurrent resolution for the amendment of sections 1, 2, and 6 of article XII of the Constitution of North Dakota, relating to regulation of corporations and to cumulative voting by corporate members or shareholders; to repeal sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII of the Constitution of North Dakota, relating to regulation of business corporations; and to provide an effective date.

STATEMENT OF INTENT

This measure removes outdated or unnecessary provisions in the Constitution of North Dakota relating to business corporations and authorizes the legislative assembly to provide by law for regulation of corporations. This measure would take effect on July 1, 2006.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to sections 1, 2, and 6 of article XII of the Constitution of North Dakota and the proposed repeal of sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII 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 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 1. The term "corporation", as used in this article, ~~shall not be understood as embracing~~ does not embrace municipalities or political divisions ~~subdivisions~~ of the state unless otherwise expressly stated; ~~but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.~~

SECTION 2. AMENDMENT. Section 2 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. ~~No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the~~ All corporations existing or hereafter chartered hold the charter subject to the provisions of this constitution. The legislative assembly shall may provide by general laws for the organization and regulation of all corporations hereafter to be created, and any such law, so passed enacted, shall be is subject to future repeal or alteration amendment.

SECTION 3. AMENDMENT. Section 6 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. ~~¶~~ Unless otherwise provided in the articles of incorporation, in all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his the member's or shareholder's votes for one candidate, or distribute them upon two or more candidates, as he the member or shareholder may prefer, provided, any cooperative corporation may adopt bylaws limiting the voting power of its stockholders.

SECTION 4. REPEAL. Sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII of the Constitution of North Dakota are repealed.

SECTION 5. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 2006.

Filed April 11, 2005

NOTE: This will be measure No. 2 on the 2006 primary election ballot.

CHAPTER 624

HOUSE CONCURRENT RESOLUTION NO. 3037

(Representatives R. Kelsch, Boucher, Kasper)

(Senators Grindberg, O'Connell)

COMMON SCHOOLS TRUST FUND

A concurrent resolution for the amendment of sections 1 and 2 of article IX of the Constitution of North Dakota, relating to distributions from and management of the common schools trust fund and the trust funds of other educational or charitable institutions; and to provide a contingent effective date.

STATEMENT OF INTENT

This measure requires that the permanent trust funds be managed to preserve their purchasing power, to provide stable distributions to fund beneficiaries, and to benefit fund beneficiaries. The measure changes trust fund distributions from interest and income earned by a fund to distributions based on a fund's average value, requires that all revenue produced by a trust fund be deposited in the fund, and provides for paying the costs of administration.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to sections 1 and 2 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 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 1. All proceeds of the public lands that have ~~heretofore~~ been, or may ~~hereafter~~ be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that ~~shall~~ fall to the state by escheat; all gifts, donations, or the proceeds thereof that come to the state for support of the common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, ~~shall must~~ be and remain a perpetual trust fund for the maintenance of the common schools of the state. ~~Only the interest and income of the fund may be expended and the principal shall be retained and devoted to the trust purpose.~~ All property, real or personal, received by the state from whatever source, for any specific educational or charitable institution, unless otherwise designated by the donor, ~~shall must~~ be and remain a perpetual trust fund for the creation and maintenance of such institution, and may be commingled only with similar funds for the same institution. ~~Should~~ If a gift be is made to an institution for a specific purpose, without designating a trustee, ~~such the~~ gift may be placed in the institution's fund; provided that such a donation may be expended as the terms of the gift provide. Revenues earned by a perpetual trust fund must be deposited in the fund. The costs of administering a perpetual trust fund may be paid out of the fund. The perpetual trust funds must be managed to preserve their purchasing power and to maintain stable distributions to fund beneficiaries.

The interest and income of each institutional trust fund held by the state shall, unless otherwise specified by the donor, be appropriated by the legislative assembly to the exclusive use of the institution for which the funds were given.

The proceeds of all bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands shall be deposited in the appropriate permanent trust fund as created by this section.

SECTION 2. AMENDMENT. Section 2 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. The interest and income of this fund Distributions from the common schools trust fund, together with the net proceeds of all fines for violation of state laws and all other sums which may be added thereto by law, ~~shall~~ must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund ~~shall~~ must ever be diverted, even temporarily, from this purpose or used for any other purpose ~~whatever~~ other than the maintenance of common schools as provided by law. Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

SECTION 3. CONTINGENT EFFECTIVE DATE. If approved by the voters, this measure becomes effective on the July first following the date on which the attorney general certifies to the secretary of state that the United States Congress has by amendment removed all inconsistent provisions found in the 1889 Enabling Act [Act of Feb. 22, 1889, ch. 180, 25 Stat. 676] and the 1862 Morrill Act [Act of July 2, 1862, ch. 130, 12 Stat. 503; 7 U.S.C. §§ 301- 308].

Filed April 7, 2005

NOTE: This will be measure No. 1 on the 2006 general election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 625

HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)
(Budget Committee on Human Services)

CHILD SUPPORT COLLECTION ON RESERVATIONS STUDY

A concurrent resolution directing the Legislative Council to study the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court jurisdictions, recognition of income withholding orders, and logistics involved in transferring child support collected to custodial parents.

WHEREAS, the state of North Dakota has limited jurisdiction on Indian reservations and seeks to resolve problems and issues between the two governments in a respectful and trusting manner; and

WHEREAS, some tribal entities do not recognize child support income withholding orders unless issued from a tribal court; and

WHEREAS, separate child support payment records may be maintained by the State of North Dakota and a sovereign Indian Nation, creating the potential for unnecessary collection activities and delays in transferring child support collected to custodial parents; and

WHEREAS, federal regulations recently have been adopted providing for direct funding of tribal child support enforcement programs; and

WHEREAS, counties with Indian reservations have difficulty providing their share of regional child support enforcement unit costs in part because reservation and other tribal land within the county is not taxable; and

WHEREAS, the Supreme Court's Committee on Tribal and State Court Affairs, which includes representatives of both state and tribal courts, is reviewing issues relating to recognition of income withholding orders; and

WHEREAS, some regional child support enforcement units no longer attempt to file child support income withholding orders in tribal courts due to past failed experiences and staff time involved;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court

jurisdictions, recognition of income withholding orders, and logistics involved in transferring child support collected to custodial parents; 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 Sixtieth Legislative Assembly.

Filed March 15, 2005

CHAPTER 626**HOUSE CONCURRENT RESOLUTION NO. 3002**

(Representatives Porter, Nelson)

(Senators Lyson, Tollefson)

HUNTING IN UNHARVESTED CROPS REPEAL URGED

A concurrent resolution urging Congress and the United States Fish and Wildlife Service to repeal the regulations restricting the hunting of migratory waterfowl on agricultural crops that have not been harvested and subsequently manipulated.

WHEREAS, hunting migratory waterfowl is one of the primary recreational pursuits of the citizens of North Dakota; and

WHEREAS, access to prime migratory waterfowl hunting areas in North Dakota is becoming increasingly difficult; and

WHEREAS, regulations adopted by the United States Fish and Wildlife Service provide that if an agricultural crop or a portion of an agricultural crop has not been harvested due to equipment failure, weather, insect infestation, or disease and the crop or the remaining portion of the crop has been manipulated, the area is considered to be a baited area and cannot be legally hunted for waterfowl; and

WHEREAS, when agricultural crops are not harvested due to adverse weather conditions and the crop is subsequently manipulated, that area should not be considered to be a baited area and the hunting of migratory waterfowl should be allowed on that area;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States and the United States Fish and Wildlife Service to repeal the regulations restricting the hunting of migratory waterfowl on agricultural crops that have not been harvested and subsequently manipulated; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, the director of the United States Fish and Wildlife Service, the director of the United States Fish and Wildlife Services Mountain-Prairie Region Office by certified mail with return receipt requested, and to each member of the North Dakota Congressional Delegation by first-class mail.

Filed April 11, 2005

CHAPTER 627**HOUSE CONCURRENT RESOLUTION NO. 3005**

(Representatives Skarphol, Glassheim, Svedjan)
(Senators Andrist, Klein)

STATE LAND UTILIZATION STUDY

A concurrent resolution directing the Legislative Council to seek information identifying state-owned real estate and study the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate.

WHEREAS, during budget tours of state institutions during the 2003-04 interim, budget tour groups received information regarding the utilization of state-owned real estate; and

WHEREAS, the budget tour groups identified real estate that is not currently utilized for institutional needs; and

WHEREAS, a study of this issue could result in putting some real estate owned by the state to better use; and

WHEREAS, a review of how state real estate was acquired is needed to determine what options are available for the best future use of the real estate; and

WHEREAS, the establishment of an inventory of state agency-owned and institution-owned real estate and the designation of a single agency or a combination of agencies to manage this real estate may benefit the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council seek information from state agencies and institutions identifying state-owned real estate and study the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain a detailed inventory of state-owned real estate; 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 Sixtieth Legislative Assembly.

Filed April 11, 2005

CHAPTER 628

HOUSE CONCURRENT RESOLUTION NO. 3006

(Representatives Maragos, Kretschmar)
(Senators Flakoll, Syverson)

MARIS HALL OF FAME INDUCTION URGED

A concurrent resolution recognizing Roger Maris on his major league baseball career and urging the Committee on Baseball Veterans of the Baseball Hall of Fame to elect Roger Maris to the Baseball Hall of Fame.

WHEREAS, Roger Maris was an outstanding athlete in several competitive sports at Fargo Shanley High School, played professional baseball in Fargo, and went on to play for four major league baseball teams in both major leagues in a distinguished 12-year major league career; and

WHEREAS, Roger Maris hit 275 career home runs and drove in 851 runs in major league regular season play and played a key role in the success of seven World Series teams and three World Champion teams and is among a handful of players to hit a World Series home run for a team from each league; and

WHEREAS, Roger Maris captured the attention and imagination of America as few in the sports world have, when his outstanding season challenged and surpassed baseball's most cherished record held by the immortal Babe Ruth, and Roger Maris accomplished the unparalleled feat of hitting 61 home runs against 46 different pitchers while striking out only 67 times during the 1961 season, a feat made more remarkable by the unceasing pressure exerted upon him by the press and public attention; and

WHEREAS, Roger Maris was a fleet outfielder, renowned equally for his skill with a glove as for his prowess as an outstanding hitter, and displayed remarkable abilities on defense for which he received a Gold Glove Award; and

WHEREAS, Roger Maris was selected as the most valuable player in the American League in consecutive seasons, 1960 and 1961, and probably achieved more in baseball with less appreciation from sportswriters and fans than any other player, which is an injustice that could be rectified by the Committee on Baseball Veterans; and

WHEREAS, members of the Committee on Baseball Veterans, being among the greatest to ever play the game, can appreciate better than sportswriters ever could that Roger Maris was among the elite players of his era and what he endured in his career; and

WHEREAS, until his death in 1985, Roger Maris gave unsparingly of himself to causes for the assistance of deprived, handicapped, and underprivileged children and adults and served with Shirley Temple Black as cochairman of the national campaign for the Multiple Sclerosis Society in 1962; and

WHEREAS, Roger Maris was the recipient of the Theodore Roosevelt Rough Rider Award in 1963, which is the highest recognition the state of North Dakota can bestow upon present or former North Dakotans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly takes great pleasure in recognizing Roger Maris for his outstanding accomplishments both in and out of major league baseball and respectfully urges the Committee on Baseball Veterans of the Baseball Hall of Fame to elect Roger Maris to the Baseball Hall of Fame as a well-deserved tribute to his outstanding major league career and his inspiration to youth through his exemplary conduct on and off the baseball diamond; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to each member of the Committee on Baseball Veterans of the Baseball Hall of Fame.

Filed January 20, 2005

CHAPTER 629**HOUSE CONCURRENT RESOLUTION NO. 3007**

(Representatives Weiler, Berg, Boucher)
(Senators O'Connell, Stenehjem)

NORTH DAKOTA CLOSE-UP DAY

A concurrent resolution declaring Monday, February 14, 2005, "North Dakota Close-Up Day".

WHEREAS, the North Dakota Close-Up program is designed to ignite interest in the democratic process and instill in young people the desire to become active participants in their government; and

WHEREAS, the North Dakota Close-Up program concentrates on the functions and structures of state government and defines constitutional responsibilities assigned to each of the three branches of government; and

WHEREAS, the focus of the 2005 North Dakota Close-Up program is the legislative branch of government; and

WHEREAS, the North Dakota Close-Up program has been in existence nearly two decades; and

WHEREAS, it is anticipated that nearly 200 North Dakota high school students will participate in the 2005 North Dakota Close-Up program;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly declares Monday, February 14, 2005, "North Dakota Close-Up Day"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the North Dakota Council of Educational Leaders.

Filed March 29, 2005

CHAPTER 630**HOUSE CONCURRENT RESOLUTION NO. 3009**

(Representatives Nicholas, Brandenburg, Froelich, Gulleson, Herbel)
(Senator Erbele)

**MAINTENANCE OF CANADIAN BEEF RESTRICTIONS
URGED**

A concurrent resolution urging the United States Department of Agriculture to maintain trade restrictions on all Canadian cattle and on all edible bovine meat products derived from cattle of Canadian origin until various health, safety, and economic concerns can be satisfactorily addressed.

WHEREAS, on December 29, 2004, the United States Department of Agriculture announced that Canada would be designated a minimal-risk region for bovine spongiform encephalopathy and that trade of cattle and bovine meat products would resume as of March 7, 2005; and

WHEREAS, cattle producers in this country support the normalization of trade with Canada but urge that the normalization be based on sound science to ensure the long-term health of their cattle, the long-term viability of the cattle industry, and continued consumer confidence in this country's meat supply; and

WHEREAS, trade in cattle and edible bovine meat products should not resume with Canada until such trade is reestablished with Japan, South Korea, and Mexico; until verification exists of Canadian compliance measures; and until sufficient scientifically based protocols are established to eliminate bovine spongiform encephalopathy from international trade channels;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Department of Agriculture to maintain trade restrictions on all Canadian cattle and on all edible bovine meat products derived from cattle of Canadian origin until various health, safety, and economic concerns can be satisfactorily addressed; 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 the United States Department of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 4, 2005

CHAPTER 631**HOUSE CONCURRENT RESOLUTION NO. 3010**

(Representatives Porter, R. Kelsch)
(Senator Cook)

BROWNFIELDS AND SUPERFUND STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a state Brownfields law; superfund law; other efforts to encourage the remediation and redevelopment of sites on which there has been a release of pollution, contaminants, or petroleum; and measures to encourage property owners to invest in and redevelop these sites.

WHEREAS, the city of Mandan has experienced adverse economic conditions as a result of a petroleum release in that city; and

WHEREAS, other cities and localities in North Dakota may suffer adverse economic impacts if similar petroleum release sites are discovered; and

WHEREAS, the state has not enacted a state Brownfields or superfund law or established a remediation fund to clean up and rehabilitate such sites; and

WHEREAS, the remediation and rehabilitation of Brownfields will ensure the long-term economic viability of these areas and the cities and localities in which such sites are located;

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 Brownfields law; superfund law; other efforts to encourage the remediation and redevelopment of sites on which there has been a release of pollution, contaminants, or petroleum; and measures to encourage property owners to invest in and redevelop these sites; 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 Sixtieth Legislative Assembly.

Filed March 18, 2005

CHAPTER 632**HOUSE CONCURRENT RESOLUTION NO. 3011**

(Representatives Monson, S. Kelsh, Nelson)
(Senators Grindberg, Heitkamp)

HYDROGEN AND ENERGY RESEARCH URGED

A concurrent resolution urging the state's public research institutions of higher education to participate in a regional hydrogen and energy research and education consortium.

WHEREAS, the state's public research institutions of higher education possess important strengths in different areas that should be meshed for a strong regional presence in the national hydrogen and energy research arena; and

WHEREAS, some of this collaboration already occurs, but this collaboration often runs counter to the institutional culture of academia; and

WHEREAS, there is significant interest in the pursuit of a regional consortium to maximize institutional strengths and synergies to make this region's research and higher education institutions more competitive in attracting federal and private funds; and

WHEREAS, the formation of a regional hydrogen and energy consortium would provide many benefits for the economy of North Dakota and the well-being of its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the state's public research institutions of higher education to participate in a regional hydrogen and energy research and education consortium; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, chancellor of the Board of Higher Education, the president of the University of North Dakota, the president of North Dakota State University, the director of the Energy and Environmental Research Center at the University of North Dakota, and the chairman of the School of Engineering at North Dakota State University.

Filed March 29, 2005

CHAPTER 633

HOUSE CONCURRENT RESOLUTION NO. 3013

(Representatives Aarsvold, Wald, Wieland)
(Senators Nelson, Wardner, Warner)

MOTOR VEHICLE CRASH STUDY

A concurrent resolution directing the Legislative Council to study the causes of and factors that reduce the severity of motor vehicle crashes.

WHEREAS, certain categories of drivers pose a higher risk to the safety of the driving public, especially young male drivers; and

WHEREAS, the severity of bodily injury caused by motor vehicle crashes may be reduced by engineering, occupant protection, and training; and

WHEREAS, motor vehicle crashes are attributed to many causes, including distracted driving, drugs, alcohol, and inexperience and these causes may be prevented through education, enforcement, and engineering; and

WHEREAS, this state and other states have implemented a number of responses to the causes of accidents and there have been many other ideas that address the causes of accidents for which evaluating the success and then adopting the most successful into this state's law may provide safer highways;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the causes of and factors that reduce the severity of motor vehicle crashes; 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 Sixtieth Legislative Assembly.

Filed March 22, 2005

CHAPTER 634**HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives DeKrey, Horter, R. Kelsch)
(Senators Grindberg, Traynor, Triplett)

JUDICIAL ELECTIONS STUDY

A concurrent resolution directing the Legislative Council to study judicial elections and recent federal court decisions affecting the conduct of judicial elections.

WHEREAS, district judges and supreme court justices in North Dakota are elected on a no-party ballot; and

WHEREAS, the North Dakota Code of Judicial Conduct prohibits judges and candidates for judicial offices from engaging in most political activities, personally soliciting campaign funds, and making statements regarding issues likely to come before a court; and

WHEREAS, recent decisions by federal courts in other jurisdictions which have invalidated various restrictions on the activities of candidates for judicial offices may have a significant impact on the conduct of judicial elections 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 judicial elections and recent federal court decisions affecting the conduct of judicial elections; 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 Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 635**HOUSE CONCURRENT RESOLUTION NO. 3016**

(Government and Veterans Affairs Committee)

VETERANS' SERVICES DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the delivery of veterans' services by the state and counties.

WHEREAS, so long as the people of this state live free there will be veterans that have sacrificed to secure that freedom; and

WHEREAS, these veterans are entitled to a number of state and federal benefits and may seek advice and aid from the Department of Veterans' Affairs or a county veterans' service officer in obtaining these benefits; and

WHEREAS, there is uncertainty as to whether the current service delivery system at the state and county level is sufficient and effective; and

WHEREAS, there are veterans' service officers in the 53 counties of this state and these officers have difficulties in the provision of services to veterans because of part-time status, lack of funding, and lack of resources; and

WHEREAS, it is difficult to find and train qualified officers and consolidation of officers may be a viable means of creating full-time, well-funded, well-qualified, well-trained, and adequately compensated veterans' service officers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the delivery of veterans' services by the state and counties; 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 Sixtieth Legislative Assembly.

Filed March 15, 2005

CHAPTER 636

HOUSE CONCURRENT RESOLUTION NO. 3017

(Representatives Kerzman, L. Meier, Thoreson)
(Senators Erbele, Robinson)

HUMAN LIFE CONSTITUTIONAL AMENDMENT URGED

A concurrent resolution urging Congress to pass a human life amendment to the Constitution of the United States.

WHEREAS, the Legislative Assembly finds that the state of North Dakota has a compelling and paramount interest in the preservation and protection of the life of all human beings; and

WHEREAS, the Legislative Assembly finds that the life of a human being should be protected at every stage of biological development; and

WHEREAS, the Legislative Assembly finds that abortion procedures impose significant risks to the health and life of the pregnant mother, including subjecting her to significant risk of severe depression, suicidal ideation, suicide, attempted suicide, posttraumatic stress disorders, physical injury, and a greater risk of death than risks associated with carrying the unborn child to full term and childbirth; and

WHEREAS, the inalienable right to life is found not only in the Declaration of Independence but also in the Constitution of the United States which the senators and representatives of Congress, the members of the several state legislatures, and all federal and state executive and judicial officers are sworn to preserve, protect, and defend; and

WHEREAS, the 5th and 14th Amendments to the Constitution of the United States guarantee that no person may be deprived of life without due process of law; and

WHEREAS, Congress has the power and responsibility to enforce the guarantees contained in the 5th, 13th, and 14th Amendments to the Constitution of the United States of America, which guarantee to all persons the right not to be deprived of life without due process of law, the right to the equal protection of the law, and the right to be free from involuntary servitude and the power to enforce such guarantees includes the power to expand the definition of persons entitled to such guarantees; and

WHEREAS, abortion is a deprivation of the right to life and the right to the equal protection of the law and is the ultimate manifestation of the involuntary servitude of one human being to another;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly strongly urges the Congress of the United States to pass and all state executive and judicial officers to support an

amendment to the Constitution of the United States recognizing that the inalienable right to life is vested in each human being and guaranteeing that no human being may be deprived the equal protection of the law without due process; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the Speaker of the United States House of Representatives, the President of the United States Senate, the Governor of North Dakota, and the Chief Justice of the North Dakota Supreme Court.

Filed April 11, 2005

CHAPTER 637

HOUSE CONCURRENT RESOLUTION NO. 3019

(Representatives Froelich, Brandenburg, Kerzman, Kretschmar)
(Senators Erbele, Krauter)

LAKE OAHE WATER RETENTION URGED

A concurrent resolution urging the United States Army Corps of Engineers to retain sufficient water in the upper portion of Lake Oahe to ensure a stable water supply for the residents of the Standing Rock Indian Reservation and surrounding communities, complimenting the Governor and the Attorney General on their efforts, and urging them to continue their actions to ensure federal officials retain sufficient water in the upper portion of Lake Oahe to protect the health and well-being of the citizens of the area.

WHEREAS, the Pick-Sloan Project, as authorized in the Flood Control Act of 1944, as amended, 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

WHEREAS, the Pick-Sloan Project reservoirs have been in place for many years, thus providing downstream states in the Missouri River Basin all the benefits promised in the Pick-Sloan Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in billions of dollars in flood protection to downstream interests and has allowed these downstream interests to develop the original flood plain of the Missouri River for industrial, municipal, and agricultural uses; 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, due to unprecedented drought in the upper Missouri River Basin, the upper basin reservoirs, including Lake Oahe, are at historically low levels; and

WHEREAS, the low level of Lake Oahe has made it difficult and expensive for residents of the Standing Rock Indian Reservation and surrounding communities to access the reservoir for drinking water and other domestic, recreational, and agricultural purposes, thus endangering their health and well-being;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Army Corps of Engineers to retain sufficient water in the upper portion of Lake Oahe to ensure a stable water supply for the residents of the Standing Rock Indian Reservation and surrounding communities, compliments the Governor and the Attorney General on their efforts, and urges them to continue their actions to ensure federal officials retain

sufficient water in the upper portion of Lake Oahe to protect the health and well-being of the citizens of the area; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor; the Attorney General; the District Engineer, Omaha District, United States Army Corps of Engineers; the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the Secretary of the Interior; and each member of the North Dakota Congressional Delegation.

Filed March 22, 2005

CHAPTER 638**HOUSE CONCURRENT RESOLUTION NO. 3020**

(Representatives Berg, Boucher, Nicholas)
(Senators Flakoll, O'Connell, Stenehjem)

AGRICULTURAL DISASTER ASSISTANCE URGED

A concurrent resolution urging Congress to implement the 2003-04 emergency agricultural disaster assistance legislation in the same manner as the 2001-02 legislation.

WHEREAS, during the 2004 growing season, the state of North Dakota experienced severe and extreme weather conditions which had disastrous results to the agricultural economy; and

WHEREAS, the severe and extreme weather conditions also caused drought, which resulted in ranchers having to reduce the size of their herds; and

WHEREAS, the United States Congress has enacted emergency agricultural disaster assistance legislation that parallels the agricultural disaster assistance legislation of 2001-02; and

WHEREAS, the United States Secretary of Agriculture is implementing the emergency agricultural disaster assistance legislation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Secretary of Agriculture to implement the 2003-04 emergency agricultural disaster assistance legislation in the same manner as the 2001-02 legislation; to specifically include paragraph 83 of the 5-DAP handbook, which grants to the Farm Service Agency's Technical Committee the authority to provide quality loss payments according to commodity market discounts prevalent in each state; to use pertinent commodity price data to accurately calculate the value of a commodity for purposes of imposing the 95 percent cap; and to recognize losses associated with herd reductions during the year of loss and losses associated with continuing herd reductions due to drought conditions; 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 the United States Department of Agriculture, the United States Department of Agriculture Farm Service Agency administrator of farm programs, and to each member of the North Dakota Congressional Delegation.

Filed March 2, 2005

CHAPTER 639

HOUSE CONCURRENT RESOLUTION NO. 3021

(Representatives Froelich, Boucher, Kempenich, Nicholas)
(Senators Erbele, O'Connell)

BAN ON IMPORTATION OF CANADIAN BEEF URGED

A concurrent resolution urging the North Dakota Attorney General to support legal action to prevent the importation of live cattle and edible beef products from Canada and other countries where bovine spongiform encephalopathy is present.

WHEREAS, on January 4, 2005, the United States Department of Agriculture published a final rule relaxing restrictions on imports of live cattle and edible beef products from countries known to have bovine spongiform encephalopathy; and

WHEREAS, despite the discovery of bovine spongiform encephalopathy-infected cattle in Canada and the subsequent discovery of a bovine spongiform encephalopathy-infected cow that had been imported from Canada, and in contravention of the United States Department of Agriculture's preexisting policy and international practice not to accept cattle or edible bovine products from a country with bovine spongiform encephalopathy infection, United States Department of Agriculture representatives, up to and including the Secretary of Agriculture and other administration officials, made numerous statements in advance of any meaningful scientific analysis and before completion of the rulemaking process; and

WHEREAS, the United States Department of Agriculture's failure to apply precautionary principles inherent in the legislation it implements and its emphasis of certain economic interests and foreign policy concerns over the health and well-being of United States consumers, cattle, and cattle producers makes the United States Department of Agriculture's issuance of the final rule an action in excess of and inconsistent with its statutory authority; and

WHEREAS, the North Dakota cattle industry is best served by such decisions being based upon sound science rather than political and foreign policy consideration; and

WHEREAS, a legal action enjoining implementation of the United States Department of Agriculture rule and enjoining the importation into the United States of all live cattle from Canada and all edible beef products derived from cattle of Canadian origin has been filed in the United States district court in Billings, Montana; and

WHEREAS, other legal action may be necessary to protect the integrity of the United States cattle herd and the interests of the United States consumer;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the North Dakota Attorney General to support legal action to prevent the importation of live cattle and edible

beef products from Canada and other countries where bovine spongiform encephalopathy is present; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, Attorney General, and the Secretary of the United States Department of Agriculture.

Filed March 4, 2005

CHAPTER 640

HOUSE CONCURRENT RESOLUTION NO. 3022

(Representatives Sandvig, Charging, S. Meyer)
(Senators Bercier, Every, Triplett)

CERVICAL CANCER STUDY

A concurrent resolution directing the Legislative Council to study data regarding cervical cancer and human papillomavirus, evaluate current methods of public education and access to regular cervical cancer screening, and consider options for increasing screening accuracy.

WHEREAS, cervical cancer is the second most common cancer in women worldwide after breast cancer; and

WHEREAS, according to United States cervical cancer statistics, cervical cancer is the third most common gynecological cancer among American women, accounting for approximately 12,200 new cases diagnosed annually, with 4,100 of these cases resulting in fatalities; and

WHEREAS, cervical cancer cases in the United States are generally attributed to lack of education, lack of access to regular cervical cancer screening, and lack of screening accuracy; and

WHEREAS, new screening technologies, including Food and Drug Administration-approved testing for human papillomavirus, which is the cause of virtually all cervical cancers, offer new opportunities to eliminate this potentially deadly disease through early identification of women at increased risk; and

WHEREAS, women are entitled to proper cervical cancer information, so that they can be empowered to make informed health care decisions, and to access to routine screening, including the most accurate methods available;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study data regarding cervical cancer and human papillomavirus, evaluate current methods of public education and access to regular cervical cancer screening, and consider options for increasing screening accuracy; 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 Sixtieth Legislative Assembly.

Filed March 15, 2005

CHAPTER 641**HOUSE CONCURRENT RESOLUTION NO. 3023**

(Representatives Delmore, Glassheim, Price)
(Senators Espegard, Fischer, Krebsbach)

MILITARY BASES SUPPORT URGED

A concurrent resolution urging the Base Realignment and Closure Commission, the Secretary of Defense, and the President of the United States to support the continued maintenance of the military bases in North Dakota.

WHEREAS, in 2005 there will be recommendations for military base closures as part of the base realignment and closure rounds, as provided by Congress and supported by the President of the United States and the Department of Defense; and

WHEREAS, the state of North Dakota has three distinct and important military installations: the Grand Forks Air Force Base, the Minot Air Force Base, and the Fargo Air National Guard Base; and

WHEREAS, each North Dakota military base is a critical component to the armed forces that serve our country and the value of each base is clearly demonstrable through the established criteria of the 2005 base realignment and closure rounds; and

WHEREAS, the 319th Air Refueling Wing, the Warriors of the North, in Grand Forks, is critical to the armed forces capacity to effectively produce a worldwide response by the United States Air Force; and

WHEREAS, the 5th Bomb Wing, one of only two B-52 wings, and the 91st Space Wing, known as the Rough Riders, located in Minot, are essential components to the United States Air Force bomber and intercontinental ballistic missile operations; and

WHEREAS, the Air National Guard 178th Fighter Squadron in Fargo, known as the Happy Hooligans, plays a key role in our nation's air response as demonstrated in flying some of the first missions over Washington, D.C., after the September 11, 2001, tragedy; and

WHEREAS, the people of North Dakota have a strong tradition of supporting the military and the military personnel who provide for the protection of this country; and

WHEREAS, the military personnel in the North Dakota military bases are an honored part of the communities in which they live and have the fullest gratitude of the people of this state for their commitment and service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Base Realignment and Closure Commission, the Secretary of Defense, and the President of the United

States to support the continued maintenance of the military bases in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Base Realignment and Closure Commission, the Secretary of Defense, the President of the United States, and to each member of the North Dakota Congressional Delegation.

Filed March 30, 2005

CHAPTER 642**HOUSE CONCURRENT RESOLUTION NO. 3024**

(Representatives Berg, Boucher)

(Senators O'Connell, Stenehjem)

TAIWAN-US FREE TRADE AGREEMENT URGED

A concurrent resolution urging the United States Secretary of Commerce to complete a Taiwan-United States free trade agreement.

WHEREAS, Taiwan and the United States enjoy one of the most important economic and strategic international relationships that exist today; and

WHEREAS, Taiwan and the United States promote shared beliefs in freedom, democracy, and market principles; and

WHEREAS, Taiwan is the second largest market for hard red spring wheat in the world; and

WHEREAS, Taiwan imported 23,050,000 bushels of hard red spring wheat in the 2003-04 marketing year as a cash customer; and

WHEREAS, a Taiwan-United States free trade agreement would encourage greater innovation and new cooperative ventures for producers and entrepreneurs of both nations; and

WHEREAS, a Taiwan-United States free trade agreement would build on the strong relationship between Taiwan and the United States by simultaneously enhancing security and democracy and serving the broader interests of the United States in the Asia-Pacific region;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Secretary of Commerce to complete a Taiwan-United States free trade agreement; and

BE IT FURTHER RESOLVED, that the Fifty-ninth Legislative Assembly is supportive of all efforts to grant Taiwan official observer status at the World Health Assembly because Taiwan has had substantial achievements in the field of health, Taiwan has been a collaborative partner of the United States on a wide range of public health issues, and Taiwan can have a major regional and even global impact on people's health and well-being; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of State, the United States Secretary of Commerce, the United States Secretary of Health and Human Services, the United States Trade Representative, and to each member of the North Dakota Congressional Delegation.

CHAPTER 643**HOUSE CONCURRENT RESOLUTION NO. 3025**
(Representatives Ruby, Bellew)**CHILD VISITATION STUDY**

A concurrent resolution directing the Legislative Council to study the issues of fairness and equity as they relate to the issuance and enforcement of child visitation orders.

WHEREAS, approximately 70 percent of the caseload of North Dakota courts involves issues related to family law, including divorce, custody, and visitation as well as modifications to custody and visitation; and

WHEREAS, every child has a right to be guided, nurtured, and supported emotionally and physically by both parents regardless of the parents' marital status; and

WHEREAS, North Dakota Century Code Section 14-09-28 provides that each parent of a child has certain rights and duties with respect to custody and visitation; and

WHEREAS, concerns have been expressed that there are inequities in the enforcement of child visitation orders 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 the issues of fairness and equity as they relate to the issuance and enforcement of child 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 Sixtieth Legislative Assembly.

Filed March 22, 2005

CHAPTER 644**HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representatives Onstad, Delzer, Drovdal)
(Senators Heitkamp, Lyson)

LAKE SAKAKAWEA LEVEL MAINTENANCE URGED

A concurrent resolution urging the United States Army Corps of Engineers to maintain the level of Lake Sakakawea at a minimum elevation of 1,825 feet mean sea level.

WHEREAS, the state of North Dakota, the Standing Rock Sioux Tribe, and the Three Affiliated Tribes have a right to utilize the water of the Missouri River; and

WHEREAS, downstream states in the Missouri River Basin have recognized all of the benefits of the Pick-Sloan Plan and these states owe a debt to North Dakota for allowing the construction of Missouri River dams in the upper basin; and

WHEREAS, North Dakota has not recognized its share of benefits promised in the Pick-Sloan Plan; and

WHEREAS, tourism, recreation, and the well-being of the citizens and communities in North Dakota depend upon an adequate and dependable source of water; and

WHEREAS, the future development of industry and businesses in North Dakota also depends upon an adequate and dependable source of water; and

WHEREAS, irrigation development in North Dakota depends upon an adequate and dependable source of water; and

WHEREAS, wildlife, including several endangered species, is being threatened by the low level of Lake Sakakawea;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Army Corps of Engineers to maintain the level of Lake Sakakawea at a minimum elevation of 1,825 feet mean sea level; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; 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 Congressional Delegation.

Filed March 28, 2005

CHAPTER 645

HOUSE CONCURRENT RESOLUTION NO. 3027

(Representatives S. Meyer, Haas, Kerzman, Onstad)

(Senators Krauter, Wardner)

LAKE SAKAKAWEA PROTECTION URGED

A concurrent resolution urging the United States Army Corps of Engineers to retain sufficient water in Lake Sakakawea to ensure a stable water supply for all water users, including municipal, rural, irrigation, and industrial, complimenting the Governor and the Attorney General on their efforts, and urging them to continue their actions to ensure federal officials retain sufficient water in Lake Sakakawea to protect the health and well-being of the citizens of western North Dakota.

WHEREAS, the Pick-Sloan Project, as authorized in the Flood Control Act of 1944, as amended, 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

WHEREAS, the Pick-Sloan Project reservoirs have been in place for many years, thus providing downstream states in the Missouri River Basin all the benefits promised in the Pick-Sloan Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in billions of dollars in flood protection to downstream interests and has allowed these downstream interests to develop the original flood plain of the Missouri River for industrial, municipal, and agricultural uses; 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, due to unprecedented drought in the upper Missouri River Basin, the upper basin reservoirs, including Lake Sakakawea, are at historically low levels; and

WHEREAS, the low level of Lake Sakakawea poses a threat to several communities and other users;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the United States Army Corps of Engineers to retain sufficient water in Lake Sakakawea to ensure a stable water supply for all water users, including municipal, rural, irrigation, and industrial, compliments the Governor and the Attorney General on their efforts, and urges them to continue their actions to ensure federal officials retain sufficient water in Lake Sakakawea to protect the health and well-being of the citizens of western North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor; the Attorney General; the District Engineer, Omaha District, United States Army Corps of Engineer; the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the Secretary of the Interior; and each member of the North Dakota Congressional Delegation.

Filed March 30, 2005

CHAPTER 646**HOUSE CONCURRENT RESOLUTION NO. 3028**

(Representatives Damschen, Bellew, DeKrey, Uglem)
(Senator Dever)

**ENERGY-INTENSIVE ECONOMIC DEVELOPMENT
STUDY**

A concurrent resolution directing the Legislative Council to study utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state.

WHEREAS, this state possesses abundant energy resources, including both fossil fuels such as coal and oil and gas and renewable resources such as wind; and

WHEREAS, the state's energy producers have encountered significant obstacles in transmitting energy generated in this state to markets located outside the borders of this state; and

WHEREAS, one method to utilize the state's abundant energy resources would be to locate energy-intensive industries in this state; and

WHEREAS, location of energy-intensive industries in this state would not only allow the state to utilize its abundant sources of energy but would create much-needed jobs and population growth 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 utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the 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 Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 647**HOUSE CONCURRENT RESOLUTION NO. 3029**

(Representatives Conrad, Thorpe, Timm)
(Senators Krebsbach, Seymour, Tollefson)

NAWS PROJECT SUPPORT

A concurrent resolution expressing the Legislative Assembly's support for continued construction of the Northwest Area Water Supply Project.

WHEREAS, many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances; and

WHEREAS, many areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable long-term supply; and

WHEREAS, supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River utilizing a pipeline transmission and delivery system may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water; and

WHEREAS, the Fifty-second Legislative Assembly directed the State Water Commission to develop a pipeline transmission and delivery system to deliver water supplies from the Missouri River and other sources to areas and localities in northwestern North Dakota; and

WHEREAS, the State Water Commission has entered contracts with the cities of Minot, Mohall, Bottineau, Kenmare, Berthold, and others for delivery of water through the Northwest Area Water Supply Project; and

WHEREAS, the Northwest Area Water Supply Project has been under construction since April 2002; and

WHEREAS, the cities that have contracted with the State Water Commission for water delivery to address water supply issues, noncompliance with federal Environmental Protection Agency regulations, and other similar potable water issues do need the Northwest Area Water Supply Project;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly expresses its support for continued construction of the Northwest Area Water Supply Project; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, State Engineer, each member of the State Water Commission, the President of the United States, the Secretary of the Interior, the Commissioner of Reclamation, the Prime Minister of Canada, the Minister of Foreign Affairs of Canada, the Premier of the Province of Manitoba, and each member of the North Dakota Congressional Delegation.

Filed March 30, 2005

CHAPTER 648**HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Berg, Boucher)

(Senators O'Connell, Stenehjem)

TRIBAL-STATE RELATIONS STUDY

A concurrent resolution directing the Legislative Council to study issues relating to tribal-state relations, including methods for encouraging greater tribal-state cooperation; the promotion of economic development on Indian reservations in the state; the identification and study of health care, child welfare services, social services, environmental protection, education, and law enforcement issues on the reservations; the identification and study of the social and fiscal impact of providing social services in counties within and adjacent to the reservations; and the identification and proposals for the resolution of the water issues affecting the state and the tribes.

WHEREAS, there are five federally recognized Indian tribes and bands in this state, each with a unique history and unique concerns; and

WHEREAS, each of these tribes and bands is a separate and independent political community with a sovereign government that is distinct and separate from the state; and

WHEREAS, tribal governments in this state administer many programs, including state programs, which provide benefits to tribal and nontribal members, such as child welfare services, health care services, social services, environmental protection, education, and law enforcement; and

WHEREAS, there is a need for state and tribal governments to discuss matters of mutual concern in a government-to-government relationship; and

WHEREAS, the Indian tribes and bands in this state and the state of North Dakota should have a mutual respect for each other and should strive to improve communications on issues of mutual concern; and

WHEREAS, a study of tribal-state issues would assist in resolving potential conflicts, maximizing key intergovernmental relations, and enhancing an exchange of ideas and resources for the greater good of all North Dakota residents, whether tribal members or not;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study issues relating to tribal-state relations, including methods for encouraging greater tribal-state cooperation; the promotion of economic development on Indian reservations in the state; the identification and study of health care, child welfare services, social services, environmental protection, education, and law enforcement issues on the reservations; the identification and study of the social and fiscal impact of providing social services in counties within

and adjacent to the reservations; and the identification and proposals for the resolution of the water issues affecting the state and the tribes; and

BE IT FURTHER RESOLVED, that the Legislative Council may assign portions of this study to appropriate interim committees; 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 Sixtieth Legislative Assembly.

Filed April 11, 2005

CHAPTER 649**HOUSE CONCURRENT RESOLUTION NO. 3033**

(Representatives Damschen, DeKrey, Uglem)

**WETLAND MITIGATION REQUIREMENTS REMOVAL
URGED**

A concurrent resolution urging Congress to remove wetland mitigation requirements from highway construction projects.

WHEREAS, North Dakota is undergoing highway construction projects throughout the state; and

WHEREAS, the cost of highway construction projects could be reduced by reviewing various factors, including wetlands mitigation; and

WHEREAS, North Dakota's interest in preserving wetlands should be addressed on a state rather than federal level; and

WHEREAS, North Dakota manages the state's natural resources in highway construction projects based on balancing the competing public interests of wetlands preservation and local, state, and national transportation needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States to remove wetlands mitigation requirements from highway construction projects; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Federal Highway Administration, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2005

CHAPTER 650**HOUSE CONCURRENT RESOLUTION NO. 3034**

(Representatives Sandvig, L. Meier, Sitte)
(Senators Erbele, Triplett)

SCHOOL RECESS URGED

A concurrent resolution urging school districts to provide a midmorning and midafternoon recess to all students in kindergarten through grade six.

WHEREAS, the Women-in-Government task force on obesity recommends more exercise for school-age children; and

WHEREAS, the benefits of regular exercise include burning excess calories, controlling weight, increasing learning responses, relieving symptoms of depression, and improving symptoms associated with attention deficit hyperactivity disorder; and

WHEREAS, recess creates a supportive environment for children and allows them to incorporate regular physical activity into their daily lives; and

WHEREAS, recess provides children with discretionary time and opportunities to engage in physical activities that lead to healthy bodies and enjoyment of movement; and

WHEREAS, recess results in enhanced cognitive abilities and facilitates improved attention in the classroom; and

WHEREAS, recess is an essential component of the total educational experience for elementary schoolchildren;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges each school district to provide a midmorning and midafternoon recess of at least 10 minutes to all students in kindergarten through grade six; and

BE IT FURTHER RESOLVED, that school district administrators direct that recesses be held indoors during inclement weather and ensure that students are given the opportunity to engage in physical exercise during each recess; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each school district administrator and to each elementary school principal in this state.

Filed March 29, 2005

CHAPTER 651**HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives Glassheim, Carlson, Skarphol)
(Senator Grindberg)

CONTINUING APPROPRIATION AUTHORITY STUDY

A concurrent resolution directing the Legislative Council to study state agency and institution continuing appropriation authority.

WHEREAS, Section 34 of Senate Bill No. 2015 (2003), directed each executive branch agency or institution to report during budget presentations to the Appropriations Committees of the Fifty-ninth Legislative Assembly on statutory provisions authorizing the agency or institution to spend funds pursuant to a continuing appropriation; and

WHEREAS, the summary report provided to the Appropriations Committees was to provide justification for continuing the authority, expenditures made pursuant to the continuing appropriation, and related revenues and fund balances for the 1999-2001 biennium, the 2001-03 biennium, the 2003-05 biennium to date, and projections for the 2005-07 biennium; and

WHEREAS, the Fifty-ninth Legislative Assembly is considering legislation that would require a detailed report on state agency and institution continuing appropriations, including related expenditures, revenues, and fund balances for the current biennium and projected for the next biennium to be part of the budget data presented to the Legislative Assembly by the Office of Management and Budget; and

WHEREAS, a study will provide the Legislative Council with an opportunity to further review the statutory provisions authorizing the expenditure of funds pursuant to continuing appropriation authority and justification for continuing the authority;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state agency and institution continuing appropriations, the statutory authorization for the continuing appropriations, and the agency's or institution's justification for the continuing appropriation authority; 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 Sixtieth Legislative Assembly.

Filed April 22, 2005

CHAPTER 652

HOUSE CONCURRENT RESOLUTION NO. 3038

(Representatives DeKrey, Horter, Porter)

(Senators Klein, Robinson, Thane)

ORGAN AND TISSUE DONATION STUDY

A concurrent resolution directing the Legislative Council to study organ and tissue donation and actions that may be taken at the regional, state, local, and private levels to increase organ and tissue donations.

WHEREAS, each day approximately 70 people receive an organ transplant, but another 16 people on waiting lists die because not enough organs are available; and

WHEREAS, from 1995 to 2000, the number of people waiting for organ transplantation increased by 80 percent, while the number of cadaveric donors grew by less than 12 percent; and

WHEREAS, in 2003, of the approximately 25,000 organ transplants performed in the United States, almost 7,000 of those donations came from living donors; and

WHEREAS, significant national, regional, state, and private consideration has been given to the topic of methods to increase organ and tissue donation, including creation of donor registries, with more than 20 states already having operational donor registries; and

WHEREAS, on April 5, 2004, President Bush signed into law the federal Organ Donation and Recovery Improvement Act, which authorizes \$25,000,000 in new resources for efforts to increase donation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study organ and tissue donation and actions that may be taken at the regional, state, local, and private levels to increase organ and tissue donations; 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 Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 653**HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Dosch, Glassheim, N. Johnson)
(Senators Krauter, Wardner)

TOURISM MARKETING STUDY

A concurrent resolution directing the Legislative Council to study the appropriate level of state-sponsored tourism marketing.

WHEREAS, tourism is the state's second largest industry, including establishments from the hostelry, food and beverage, entertainment, and retail sectors; and

WHEREAS, the business of tourism has become an undeniably important part of North Dakota's economy; and

WHEREAS, promotion of tourism throughout the state is a recognized role of the state; and

WHEREAS, the state's commitment to tourism promotion is significantly lower than that of surrounding states;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the appropriate level of state-sponsored tourism marketing; 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 Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 654

HOUSE CONCURRENT RESOLUTION NO. 3040

(Representatives Keiser, Carlson, Iverson, Koppelman, Ruby)

UNEMPLOYMENT INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state.

WHEREAS, the unemployment insurance tax structure can and does impact the overall economic development of the state of North Dakota; and

WHEREAS, the current unemployment insurance rate structure was defined statutorily by the Fifty-sixth Legislative Assembly, and has seen minor changes in the succeeding legislative sessions; and

WHEREAS, the Fifty-ninth Legislative Assembly considered, but did not enact, House Bill No. 1425 which would have created a new business rate for certain classes of employers; and

WHEREAS, consideration of appropriate unemployment insurance tax rates for new businesses must take into account the historical data indicating the cyclical economic risks the relevant industries have faced; and

WHEREAS, the question of the impact of unemployment insurance tax rates on new businesses needs more comprehensive study before rates are substantially changed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with any legislation necessary to implement its recommendations, to the Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 655**HOUSE CONCURRENT RESOLUTION NO. 3042**

(Representatives Kasper, Ruby, Thoreson, Weiler)
(Senators Holmberg, Klein)

IDENTITY THEFT STUDY

A concurrent resolution directing the Legislative Council to study the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual.

WHEREAS, identity theft is an issue of rising national importance, with the federal government as well as state governments investing significant energy into researching possible approaches to more effectively deal with this problem; and

WHEREAS, as technology continues to evolve, the opportunities for identity theft become more and more sophisticated and far-reaching; and

WHEREAS, the personal and commercial damages resulting from unauthorized use of personal identifying information are significant; and

WHEREAS, North Dakotans are being harmed by identity theft; and

WHEREAS, residents of this state have voiced a concern that North Dakota's laws do not adequately and comprehensively address the prohibition of and the penalties for identity theft;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual; 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 Sixtieth Legislative Assembly.

Filed April 4, 2005

CHAPTER 656

HOUSE CONCURRENT RESOLUTION NO. 3043

(Representatives Sitte, Charging, Horter, Kreidt)

(Senators Holmberg, Triplett)

HOMELESS HOUSING STUDY

A concurrent resolution directing the Legislative Council to study the need for supportive housing and services, including emergency shelters, transition housing, and permanent supportive housing for homeless individuals and families with children.

WHEREAS, a survey of key leaders representing cities, counties, reservations, public housing authorities, banks, realtors, apartment associations, builders, and statewide housing organizations found that three out of four key leaders expressed the need for the state to play a role in increasing the supply of adequate and affordable housing; and

WHEREAS, the quality of life for homeless individuals and families with children in this state is threatened by a lack of affordable and supportive housing and services; and

WHEREAS, in November 2004 the North Dakota State University Data Center issued a statewide housing needs assessment that recommended special attention be given to housing for special needs populations, including the homeless; and

WHEREAS, there is an unmet housing need in this state for approximately 2,000 beds for homeless individuals and families with children; and

WHEREAS, the benefit of supportive housing for homeless individuals and families with children would be increased quality of life, increased length of employment, reduced time spent in emergency rooms, jails, and detoxification units, and reduced costs to the county and the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the need for supportive housing and services, including emergency shelters, transition housing, and permanent supportive housing for homeless individuals and families with 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 Sixtieth Legislative Assembly.

Filed March 30, 2005

CHAPTER 657**HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Conrad, Delmore, Dosch, Wieland)

(Senators Fischer, Wardner)

NONPROFIT GOVERNMENT SELF-INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of authorizing nonprofit organizations to participate in a government liability self-insurance pool.

WHEREAS, many nonprofit organizations in North Dakota qualify for 501(c)(3) recognition by the federal Internal Revenue Service; and

WHEREAS, 501(c)(3) organizations provide medical and recreational services, human services, and cultural activities that may not otherwise be available; and

WHEREAS, nonprofit organizations are generally supported through charitable contributions or government contracts; and

WHEREAS, many nonprofit organizations have experienced significantly increased insurance costs in recent years even though legal claims against nonprofit organizations in this state have been minimal compared to similar organizations in other states; and

WHEREAS, although political subdivisions in the state have maintained low insurance rates through a government liability self-insurance pool, nonprofit organizations have not been afforded the opportunity to participate in the self-insurance pool; and

WHEREAS, allowing nonprofit organizations to participate in a government liability self-insurance pool would reduce costs for political subdivisions that contract for services with nonprofit organizations and reduce the portion of contributions made by the public to nonprofit organizations which must be devoted to insurance costs; and

WHEREAS, a study of methods through which nonprofit organizations could be included within a government liability self-insurance pool may determine an effective solution for reducing insurance costs for nonprofit organizations;

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 authorizing nonprofit organizations to participate in a government liability self-insurance pool; 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 Sixtieth Legislative Assembly.

Filed March 15, 2005

CHAPTER 658

HOUSE CONCURRENT RESOLUTION NO. 3047

(Representatives Metcalf, Damschen, Mueller, Pollert, Uglem)
(Senator Lyson)

SENTENCING ALTERNATIVES STUDY

A concurrent resolution directing the Legislative Council to study sentencing alternatives with an emphasis on the expanded use of rehabilitation over incarceration, the provision of more treatment options, and the adequate funding of treatment programs.

WHEREAS, during the 2001-03 biennium, the state's inmate population increased 9.5 percent and reached an all-time high of 1,299 inmates in September 2004; and

WHEREAS, in 2001 drug crimes surpassed property crimes as the largest category of crimes for which offenders were incarcerated in the state's corrections system; and

WHEREAS, the increasing use and manufacture of methamphetamine by state residents has resulted in drug offenders being the fastest-growing segment of the state's inmate population for the third straight biennium; and

WHEREAS, recent developments in criminal justice indicate the emergence of a national movement in favor of treating, rather than incarcerating, nonviolent drug possession offenders; and

WHEREAS, these developments include drug courts, local policies that favor treatment, and statewide initiatives that divert nonviolent drug offenders to treatment instead of incarceration;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study sentencing alternatives with an emphasis on the expanded use of rehabilitation over incarceration, the provision of more treatment options, and the adequate funding of treatment programs; 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 Sixtieth Legislative Assembly.

Filed April 4, 2005

CHAPTER 659**HOUSE CONCURRENT RESOLUTION NO. 3054**

(Representatives Wrangham, Charging)

(Senator J. Lee)

**CHILDREN WITH SPECIAL HEALTH CARE NEEDS
STUDY**

A concurrent resolution directing the Legislative Council to study state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed.

WHEREAS, there is a significant number of North Dakota children who have or are at risk of getting chronic physical, developmental, behavioral, or emotional conditions that require special health care needs; and

WHEREAS, in an attempt to address child special health care needs, North Dakota has adopted Part C of the Individuals With Disabilities Education Act (IDEA), which provides early intervention services for children from birth until age 3 and has adopted Part B, which provides ongoing early intervention services for children from age 3 to school; and

WHEREAS, although early intervention services offered under IDEA include case management and Medicaid, the qualifying requirements for these programs become more stringent under Part B, resulting in the eligibility disqualification of children during the transition from Part C to Part B; and

WHEREAS, 31 percent of the North Dakota children with special health care needs have inadequate health insurance; and

WHEREAS, the families of 24 percent of the North Dakota children with special health care needs experience significant financial problems due to a child's health care needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed; 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 Sixtieth Legislative Assembly.

Filed March 30, 2005

CHAPTER 660

HOUSE CONCURRENT RESOLUTION NO. 3056

(Representatives Berg, Haas, Klein)
(Senators Stenehjem, Christmann, Grindberg)
(Approved by the Delayed Bills Committee)

SOCIAL SECURITY SYSTEM STRENGTHENING URGED

A concurrent resolution urging the President and Congress to reform and strengthen the Social Security system in order to ensure its viability for future generations.

WHEREAS, the President is committed to keeping the promise of Social Security for today's retirees and those nearing retirement while strengthening Social Security for our children and grandchildren; and

WHEREAS, Social Security provides a critical foundation of income for retired and disabled workers; and

WHEREAS, Social Security benefits constitute 90 percent of total income for one-third of Americans over age 65; and

WHEREAS, 114,047 North Dakotans are receiving Social Security benefits; and

WHEREAS, 81,968 North Dakotans are receiving Social Security retirement benefits; and

WHEREAS, 12,652 North Dakotans are receiving Social Security disability benefits; and

WHEREAS, 19,427 North Dakotans are receiving Social Security survivor's benefits; and

WHEREAS, 4,740 North Dakota children under age 18 are receiving Social Security benefits; and

WHEREAS, the trustees of the Social Security trust fund estimate that doing nothing to fix the Social Security system will cost Americans, as well as their children and grandchildren, an estimated \$10.4 trillion; and

WHEREAS, the trustees of the Social Security trust fund estimate that by the year 2018, the Social Security system will begin to pay out more in benefits than it takes in in revenues, with shortfalls growing larger with each passing year; and

WHEREAS, the trustees of the Social Security trust fund estimate that by the year 2042, when workers who are now in their mid-twenties begin to retire, the Social Security system will be bankrupt unless action is taken now to save it; and

WHEREAS, Social Security is sound for today's seniors and for those nearing retirement but needs to be reformed to ensure that Social Security is there for today's younger workers; and

WHEREAS, as a result of demographic changes, the current Social Security system will be unable to pay benefits scheduled for the children and grandchildren of today's beneficiaries unless enormous payroll tax increases or huge benefit cuts are enacted; and

WHEREAS, one of the tests of true leadership is to confront problems and not pass them on to the next generation; and

WHEREAS, to ensure the long-term viability of the Social Security system, the President and Congress can and should make some adjustments to improve its operation while preserving its essential character as the foundation of America's retirement system; and

WHEREAS, the President has vowed not to change benefits for today's retirees or near-retirees but desires that Social Security be permanently strengthened for our children and grandchildren, without raising payroll taxes; and

WHEREAS, the President favors voluntary personal accounts as part of a comprehensive solution to give younger workers the option to set aside a portion of their payroll taxes in an account they own and control; and

WHEREAS, workers who do not choose to have a personal account would continue to draw benefits as Americans have long done from the Social Security program; and

WHEREAS, personal accounts will provide Americans who choose to participate with an opportunity to share in the benefits of economic growth by participating in markets through sound investments;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the President and Congress of the United States to reform and strengthen the Social Security system in order to ensure its viability for future generations; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President, the majority and minority leaders of the United States Senate and House of Representatives, the trustees of the Social Security trust fund; and to each member of the North Dakota Congressional Delegation.

Filed April 4, 2005

CHAPTER 661**HOUSE CONCURRENT RESOLUTION NO. 3057**

(Representatives Martinson, Carlisle, Dosch, Keiser, Klemin, L. Meier, Sitte, Weiler)
(Senators Dever, Kilzer, Kringstad, Stenehjelm)

**WOMEN'S JUNIOR NATIONAL CURLING CHAMPIONS
CONGRATULATED**

A concurrent resolution congratulating Team North Dakota for winning the USA Curling Women's Junior National Championship and wishing Team North Dakota continued success as Team USA in the 2005 Women's Junior World Curling Championship in Italy.

WHEREAS, Team North Dakota, consisting of Gillian Gervais, Sarah Gervais, Stephanie Jensen, Stephanie Sambor, and Amy Hultstrand and coach David Jensen, completed a week of stellar curling by capturing the 2005 USA Curling Women's Junior National Championship in Bismarck; and

WHEREAS, Team North Dakota earned the right and the privilege to represent the United States in competition for the Women's Junior World Curling Championship in competition in Pinerolo, Italy, in March 2005; and

WHEREAS, the sport of curling is known worldwide as being a game of skill and traditions and as stated by the United States Curling Association, "A shot well executed is a delight to see and so, too, it is a fine thing to observe the time-honored tradition of curling being applied in the true spirit of the game";

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly takes great pride in extending congratulations to Team North Dakota for winning the 2005 USA Curling Women's Junior National Championship and wishes Team North Dakota USA good luck and good curling in the true spirit of the game and as ambassadors of the Great State of North Dakota and the United States of America at the Women's Junior World Curling Championship in Italy; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member and the coach of Team North Dakota.

Filed April 7, 2005

CHAPTER 662**HOUSE CONCURRENT RESOLUTION NO. 3058**

(Representatives Owens, Dietrich, Svedjan)

(Senators Espegard, Hacker, Holmberg)

(Approved by the Delayed Bills Committee)

AIR TRAFFIC FACILITY MAINTENANCE URGED

A concurrent resolution urging the Federal Aviation Administration to maintain the Grand Forks Automated Flight Service Station as a federal air traffic facility properly staffed by government employees.

WHEREAS, the Grand Forks Automated Flight Service Station provides pilots with weather and aeronautical data to help them make critical and often lifesaving decisions; and

WHEREAS, whether assisting University of North Dakota student pilots, coordinating air ambulance flights to our rural communities, relaying data to commercial operators flying passengers and supplies over the state, often in the worst of weather, or assisting the military in matters of national security, the Grand Forks Automated Flight Service Station provides an invaluable service that is intimately related to the public interest; and

WHEREAS, the Grand Forks Automated Flight Service Station is responsible for the continuous monitoring of international border air space and daily support of the missions of the Minot Air Force Base, Grand Forks Air Force Base, Fargo Air National Guard, and Bismarck National Guard flight operations; and

WHEREAS, maintaining the Grand Forks Automated Flight Service Station with proper staffing levels and equipment is a fundamental necessity in the continuation of these crucial services; and

WHEREAS, the Federal Aviation Administration is primarily responsible for the safety and security of aviation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Federal Aviation Administration to maintain the Grand Forks Automated Flight Service Station as a federal air traffic facility properly staffed by government employees; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President and Vice President of the United States, the administrator of the Federal Aviation Administration, and to each member of the United States Senate and United States House of Representatives.

Filed April 7, 2005

CHAPTER 663

HOUSE CONCURRENT RESOLUTION NO. 3059

(Representatives Berg, Keiser, Wald)

(Senators Klein, Tallackson)

(Approved by the Delayed Bills Committee)

INSURANCE REGULATION NONINTERFERENCE URGED

A concurrent resolution urging Congress to oppose federal legislation that would impair, erode, and limit the ability of state governments to regulate the business of insurance.

WHEREAS, regulation, oversight, and consumer protection have traditionally and historically been powers reserved to state governments; and

WHEREAS, state legislatures are the proper governmental entities to determine public policy on insurance issues as enacted under the federal McCarran-Ferguson Act of 1945, which reserved the regulation of the business of insurance to the states; and

WHEREAS, state legislatures are more responsive to the needs of their constituents and are more knowledgeable regarding the market conditions that may exist in individual states and the need for unique insurance products and regulation to meet their specific market demands; and

WHEREAS, state legislatures and other organizations such as the National Conference of Insurance Legislators, National Conference of State Legislatures, and the National Association of Insurance Commissioners have recognized difficulties in the marketplace that have created regulatory hurdles in certain states or delayed speed-to-market of insurance products; and

WHEREAS, state legislatures, the National Conference of Insurance Legislators, and the National Association of Insurance Commissioners have and continue to address uniformity issues between states by the adoption of model laws that address market conduct, product approval, agent licensing, and rate deregulation; and

WHEREAS, many state governments derive general revenues from the regulation of the business of insurance, including \$30,928,373 from premium taxes collected in the fiscal year ending June 30, 2004, by the state of North Dakota; and

WHEREAS, the proposed federal State Modernization and Regulatory Transparency (SMART) Act, which would create mandatory federal insurance standards preempting state law and undermining the sovereignty of state governments, is being contemplated by certain members of the United States Congress; and

WHEREAS, the proposed SMART Act would "federalize" insurance regulation and threaten the power of state legislatures, governors, insurance commissioners, and attorneys general to oversee, regulate, and investigate the

business of insurance, thereby impairing, eroding, and limiting their ability to protect the interests of their constituents; and

WHEREAS, many states, including North Dakota, have recently enacted and amended state insurance laws to modernize market regulation and provide insurers with greater ability to respond to changes in market conditions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States to oppose federal legislation, such as the proposed SMART Act, which would impair, erode, and limit the ability of state governments to regulate the business of insurance; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, to members of the United States House of Representatives Committee on Financial Services, and to members of the United States Senate Committees on Banking, Housing, and Urban Affairs and Commerce, Science and Transportation.

Filed April 18, 2005

CHAPTER 664

HOUSE CONCURRENT RESOLUTION NO. 3060

(Representatives Klein, Berg, Boucher)

(Senators Stenehjem, O'Connell)

(Approved by the Delayed Bills Committee)

AIR SPACE AND SPECIAL FORCES TRAINING INITIATIVE URGED

A concurrent resolution urging the Department of Defense to use North Dakota for the Department of Defense's air space and special forces ground training initiatives.

WHEREAS, future special operations forces will require space with existing infrastructure and industry, with varying terrain and climates to train new nonstandard operations forces, develop and test new doctrines and tactics, and rehearse real-world scenarios; and

WHEREAS, North Dakota has the available towns and cities to train military operations on urban terrain, open remote land, and the infrastructure and industry access for targeting and securing; and

WHEREAS, North Dakota has low ongoing infrastructure or rental costs and a diverse industry base with no encroachment issues now or in the foreseeable future; and

WHEREAS, North Dakota's geography allows for real combat zone dimensions to facilitate "train as we fight" in the air and on the ground; and

WHEREAS, North Dakota has diverse terrain and four distinct seasons that allow for the replication of similar terrain and weather conditions of unstable regions of the world; and

WHEREAS, North Dakota can provide the United States military with the nation's largest overland air and ground training space which will allow for synchronized joint operations training; and

WHEREAS, North Dakota has a thriving commercial and private air service industry that could be beneficial to assisting in this initiative and the state pledges to work cooperatively to ensure all military, private, and public air service needs are met; and

WHEREAS, North Dakota has five major Native American reservations for potential training with diverse cultures and native language challenges; and

WHEREAS, North Dakota has supportive political subdivisions and supportive populace with the highest per capita membership of United States military in the United States; and

WHEREAS, the Legislative Assembly and Governor strongly support this initiative and, by this resolution, demonstrate to the Department of Defense their commitment and ongoing support;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Department of Defense to use North Dakota for the Department of Defense's air space and special forces ground training initiatives; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Defense, the President of the United States, and to each member of the North Dakota Congressional Delegation.

Filed April 22, 2005

SENATE CONCURRENT RESOLUTIONS

CHAPTER 665

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)

(Budget Section)

BLOCK GRANT HEARINGS

A concurrent resolution 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 passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 creating the community services block grant program; and

WHEREAS, the Legislative Assembly is required to conduct public hearings; and

WHEREAS, the Appropriations Committees have met the public hearing requirement for community services block grant moneys expected for the next biennium by the Department of Commerce; and

WHEREAS, the Fifty-ninth 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 2006 and thus its public hearing responsibility for grants not approved by the Fifty-ninth Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Department of Commerce appropriations bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2007; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of additional block grants or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-ninth Legislative Assembly through September 30, 2007, and the Budget Section may provide public notice and hold the hearings authorized by this resolution using the methods and procedures it deems appropriate.

Filed March 24, 2005

CHAPTER 666

SENATE CONCURRENT RESOLUTION NO. 4003

(Senators Syverson, Flakoll, Nelson)
(Representatives Bernstein, Ekstrom, Grande)

VETERANS MEMORIAL BRIDGE

A concurrent resolution designating, in conjunction with the state of Minnesota, the Main Avenue bridge between Fargo, North Dakota, and Moorhead, Minnesota, as the Veterans Memorial Bridge.

WHEREAS, bridges demonstrate unity of purpose and enhance the expansion of commerce and communication by surmounting natural and man-made obstacles; and

WHEREAS, commerce and communication provide the basis for a unified and purposeful region and nation for the benefit of all citizens; and

WHEREAS, a nation, undefended from external threats and internal disasters cannot grow and prosper; and

WHEREAS, the members of our armed forces have distinguished themselves as true patriots in the defense of our national integrity and ideals when called to duty and have willingly and unselfishly provided for the defense of this nation at great personal sacrifice;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That in recognition of the sacrifice of veterans and dedication to honor and duty in defense of our nation and in recognition of their unswerving devotion to our nation and the freedoms and precepts for our nation, a permanent and visible example of gratitude of the citizens of North Dakota and Minnesota for the service of these veterans is the Main Avenue bridge between Fargo, North Dakota, and Moorhead, Minnesota, and the bridge is designated as the "Veterans Memorial Bridge"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, the director of the North Dakota Department of Transportation, the Governor of Minnesota, the commissioner of the Minnesota Department of Transportation, the mayor of Fargo, and the mayor of Moorhead.

Filed March 24, 2005

CHAPTER 667**SENATE CONCURRENT RESOLUTION NO. 4005**

(Senators Trenbeath, Lyson, Mutch, Seymour)
(Representatives Delmore, D. Johnson)

164TH INFANTRY MEMORIAL HIGHWAY

A concurrent resolution designating United States Highway 2 through the state of North Dakota as the 164th Infantry Memorial Highway.

WHEREAS, the 164th Infantry was operational from 1885 to 1955 and was made up of members of the North Dakota National Guard; and

WHEREAS, the 164th Infantry entered federal service from May 20, 1898, through September 25, 1899, for the Spanish-American War and the Philippine Insurrection; and

WHEREAS, the 164th Infantry was called into federal service on June 18, 1916, through February 14, 1917, for the Mexican Border Conflict; and

WHEREAS, the 164th Infantry entered federal service for World War I on October 4, 1917, through February 18, 1919; and

WHEREAS, the 164th Infantry entered federal service for World War II on February 10, 1941, through June 10, 1946, and in October 1942 at Guadalcanal, became the first United States Army unit to engage in offensive action against the enemy and was involved in the heaviest fighting of this campaign; and

WHEREAS, the 164th Infantry was ordered into federal service for the Korean Conflict in 1950;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That in honor of the 164th Infantry, United States Highway 2 through the state of North Dakota is designated as the "164th Infantry Memorial Highway"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor and the director of the Department of Transportation.

Filed March 24, 2005

CHAPTER 668**SENATE CONCURRENT RESOLUTION NO. 4006**

(Senators Klein, O'Connell, Stenehjem)
(Representatives Berg, Boucher, Devlin)

**EMERGENCY MEDICAL SERVICES TRAINING
IMPROVEMENT URGED**

A concurrent resolution urging the National Emergency Medical Services Scope of Practice Model Review Team to reconsider significantly raising the training requirements of emergency medical services providers.

WHEREAS, North Dakota has a predominantly voluntary emergency medical services workforce; and

WHEREAS, emergency medical services volunteers give a substantial amount of their personal time to be on duty twenty-four hours per day seven days a week to render care and to transport the sick and injured, and these volunteers are a vital component of public safety; and

WHEREAS, the National Emergency Medical Services Scope of Practice Model would significantly increase the number of training hours required to become an emergency medical technician, eliminate the emergency medical technician intermediate level, and restrict the procedures that a paramedic could perform; and

WHEREAS, increasing the emergency medical services provider's training requirements may discourage individuals from volunteering as emergency medical services providers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the National Emergency Medical Services Scope of Practice Model Review Team to reconsider significantly raising the training requirements of emergency medical services providers; and

BE IT FURTHER RESOLVED, that the model review team be requested to not eliminate the emergency medical technician intermediate level and to not restrict procedures currently permitted to be performed by paramedics; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to each member of the National Emergency Medical Services Scope of Practice Model Review Team, the executive director of the National Association of State EMS Directors, the administrator of the National Highway Traffic Safety Administration, and each member of the North Dakota Congressional Delegation.

Filed January 21, 2005

CHAPTER 669**SENATE CONCURRENT RESOLUTION NO. 4007**

(Senators Stenehjerm, Grindberg, O'Connell)
(Representatives Berg, Boucher, Klein)

MILITARY PERSONNEL MEMORIALIZED

A concurrent resolution paying tribute to North Dakota military personnel who have died in Iraq.

WHEREAS, Spc. Jon P. Fettig, Dickinson; Staff Sgt. Kenneth W. Hendrickson, Bismarck; Sgt. Keith L. Smette, Makoti; Spc. Philip D. Brown, Jamestown; Staff Sgt. Lance J. Koenig, Fargo; Spc. Cody L. Wentz, Williston; Pfc. Anthony W. Monroe, Bismarck; Spc. Thomas J. Sweet II, Bismarck; and Pfc. Sheldon R. Hawk Eagle, Grand Forks, were called upon by the United States of America to fight the forces of terror that threaten free men; and

WHEREAS, these brave, courageous, and valorous soldiers in performing their duty made that supreme sacrifice that great men and women have been called upon down through our country's history to make for the right to be free; and

WHEREAS, it is the intention of the Fifty-ninth Legislative Assembly, acting as the representatives of all the people of the state of North Dakota, to recognize these individuals;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly of the state of North Dakota hereby pays solemn tribute to:

Spc. Jon P. Fettig, Dickinson;

Staff Sgt. Kenneth W. Hendrickson, Bismarck;

Sgt. Keith L. Smette, Makoti;

Spc. Philip D. Brown, Jamestown;

Staff Sgt. Lance J. Koenig, Fargo;

Spc. Cody L. Wentz, Williston;

Pfc. Anthony W. Monroe, Bismarck;

Spc. Thomas J. Sweet II, Bismarck; and

Pfc. Sheldon R. Hawk Eagle, Grand Forks;

for their sacrifice for helping to keep the United States of America and other countries of this world free from the forces of terror that would kill the innocent and threaten the free; and

BE IT FURTHER RESOLVED, that the people of the state of North Dakota hereby join together to express deepest sympathies to the parents and relatives of these brave soldiers and to express to them the furtherant belief that these men did not die in vain; and

BE IT FURTHER RESOLVED, that the Secretary of State send enrolled copies of this resolution to the parents and wives of these heroes.

Filed January 20, 2005

CHAPTER 670**SENATE CONCURRENT RESOLUTION NO. 4008**

(Senators Kringstad, Flakoll, Kilzer, Nelson, Triplett)
(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-ninth Legislative Assembly, the following positions are designated as employee positions of the Senate and House and are to be paid the daily wages indicated:

SENATE

Secretary of the Senate	\$120
Assistant secretary of the Senate	105
Journal reporter	117
Calendar clerk	105
Bill clerk	100
Sergeant-at-arms	92
Administrative assistant to majority leader	109
Staff assistant to majority leader	109
Administrative assistant to minority leader	109
Staff assistant to minority leader	109
Chief committee clerk	109
Appropriations Committee clerk	109
Assistant Appropriations Committee clerk	105
Committee clerk for three-day committee	105
Committee clerk for two-day committee	97
Assistant committee clerk	86
Deputy sergeant-at-arms	77
Chief page and bill book clerk	85
Legislative assistant	71

HOUSE

Chief Clerk	\$120
Assistant chief clerk	105
Journal reporter	117
Calendar clerk	105
Bill clerk	100
Sergeant-at-arms	92
Administrative assistant to majority leader	109
Staff assistant to majority leader	109
Administrative assistant to minority leader	109
Staff assistant to minority leader	109
Administrative assistant to Speaker	92
Chief committee clerk	109
Appropriations Committee clerk	109

Assistant Appropriations Committee clerk	105
Committee clerk for three-day committee	105
Committee clerk for two-day committee	97
Assistant committee clerk	86
Payroll clerk	88
Deputy sergeant-at-arms	77
Chief page and bill book clerk	85
Legislative assistant	71

BE IT FURTHER RESOLVED, that each employee of the Fifty-ninth 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 one administrative assistant and 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 a part-time employee may hold more than one part-time position so long as the positions held do not exceed a full-time equivalent position; 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 20, 2005

CHAPTER 671**SENATE CONCURRENT RESOLUTION NO. 4009**

(Senator Wardner)

SCHOOL DISTRICT AND LIBRARY FUNDING STUDY

A concurrent resolution directing the Legislative Council to study school district and library funding sources to determine if a method can be found to provide an incentive to reduce school district and library property tax levies.

WHEREAS, property taxes levied by school districts and libraries constitute a majority of all property taxes levied in the state; and

WHEREAS, school districts and libraries that reduce property tax levies receive a reduction in foundation aid allocations and reduced property tax levy authority in future years under current law; and

WHEREAS, school district and library funding sources should be examined to determine whether there are methods available to encourage reduction of property tax levies by school districts and libraries; and

WHEREAS, foundation aid allocations may encourage school districts and libraries to determine the maximum property tax levy that may be imposed and build a budget around that amount to avoid loss of state funding;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study school district and library funding sources to determine if a method can be found which would provide an incentive to reduce school district property tax levies; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 672**SENATE CONCURRENT RESOLUTION NO. 4010**

(Senator Wardner)

PROPERTY TAX LEVY ALTERNATIVES STUDY

A concurrent resolution directing the Legislative Council to study alternatives to the current method of expressing property tax levies in mills per dollar of taxable valuation.

WHEREAS, property taxes levied by the state and political subdivisions are expressed in mills per dollar of taxable valuation of property; and

WHEREAS, converting mills per dollar of taxable valuation into actual property taxes against market value of property is difficult and confusing; and

WHEREAS, converting property tax levies into an understandable measure, such as tax dollars per one thousand dollars of market value, would allow citizens to understand property tax levies and judge how property taxes will impact them;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study alternatives to the current method of expressing property tax levies in mills per dollar of taxable valuation; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 673**SENATE CONCURRENT RESOLUTION NO. 4011**

(Senator Wardner)

MOBILE HOME TAXATION STUDY

A concurrent resolution directing the Legislative Council to study assessment and taxation of mobile homes and similar housing alternatives with an emphasis on making assessment and taxation of those housing alternatives equitable in comparison with assessment and taxation of traditional residential housing.

WHEREAS, questions have been raised by citizens about the equity of assessment and taxation of mobile homes and similar housing alternatives and how assessment and taxation of those housing alternatives compares to assessment and taxation of traditional residential housing; and

WHEREAS, changes in modern housing alternatives and their uses necessitate a thorough review of statutes and assessment practices to assure equitable tax treatment for all housing without creating a tax bias that favors any housing choice;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the assessment and taxation of mobile homes and similar housing alternatives with an emphasis on making assessment and taxation of those housing alternatives equitable in comparison with assessment and taxation of traditional residential housing; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 674

SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Grindberg, Hacker, Nelson)
(Representatives Gulleason, Hawken, Svedjan)

RED RIVER VALLEY RESEARCH CORRIDOR SUPPORTED

A concurrent resolution expressing support for the Red River Valley Research Corridor and commending the broad range of private and public sector partners from the federal, state, and local levels for their hard work to make the corridor a national, regional, and local success.

WHEREAS, the Red River Valley Research Corridor was conceived in 2002 with the goal to expand upon the research capacity at North Dakota universities to help build and attract high-tech businesses, generate new economic opportunities, and create good-paying jobs for the region; and

WHEREAS, the Red River Valley Research Corridor has evolved to include a steering committee composed of representatives of business, higher education, and economic development to guide the concept of the corridor; and

WHEREAS, the Red River Valley Research Corridor has evolved to include a coordinating center to act as a catalyst for the development and growth of science and technology-based enterprises throughout North Dakota; and

WHEREAS, the partners to the Red River Valley Research Corridor include the state's Congressional Delegation with special recognition of Senator Byron Dorgan and members of his staff, Governor John Hoeven and members of his staff, the Department of Commerce, the Bank of North Dakota, Job Service North Dakota, the State Board of Higher Education and North Dakota University System with special recognition of North Dakota State University and President Joseph A. Chapman and the University of North Dakota and President Charles E. Kupchella, and local economic development organizations with special recognition of the Fargo/Cass County Economic Development Corporation and Grand Forks Economic Development Corporation; and

WHEREAS, the Red River Valley Research Corridor has brought national attention to the state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly expresses its support for the Red River Valley Research Corridor and commends the broad range of private and public sector partners from the federal, state, and local levels for their hard work to make the corridor a national, regional, and local success; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the White House Office of Science and Technology Policy, the United States Department of Commerce Economic Development Administration, the National Science Foundation Directorate for Education and Human Resources Office of Experimental Program to Stimulate Competitive Research, the Governor, the Commissioner of Commerce, the executive director of Job Service North Dakota, the president of the Bank of North Dakota, each member of the State Board of Higher Education, the president of each institution under the control of the State Board of Higher Education, the International Economic Development Council, the Association of University Research Parks, the National Business Incubation Association, the Economic Development Association of North Dakota, the Fargo/Cass County Economic Development Corporation, the Grand Forks Economic Development Corporation, the coordinator of the Red River Valley Research Corridor Coordinating Center, and each member of the Red River Valley Research Corridor Steering Committee.

Filed April 6, 2005

CHAPTER 675

SENATE CONCURRENT RESOLUTION NO. 4015

(Senators Flakoll, Espegard, Wardner)
(Representatives Hawken, Thoreson)

MAURY WILLS HALL OF FAME ELECTION URGED

A concurrent resolution commending Maury Wills on his major league baseball career and urging the Committee on Baseball Veterans of the Baseball Hall of Fame to elect Maury Wills to the Baseball Hall of Fame.

WHEREAS, Maury Wills revolutionized and energized the game of baseball through his extraordinary baserunning and base stealing prowess; and

WHEREAS, Maury Wills broke Ty Cobb's 47-year-old record in 1962 when he stole a major league record 104 bases in a single season, while being caught stealing only 13 times; the year before Maury entered the majors the entire National League had a total of 388 stolen bases and in 1962 Maury Wills alone stole over 25 percent of the league total the year before he made the majors; and

WHEREAS, Maury Wills led the National League in stolen bases six straight seasons and tied the National League record of four years leading the league in singles; and

WHEREAS, Maury Wills gathered 2,134 hits and had a lifetime batting average of .281, which is equal to or greater than that of a number of other Hall of Fame middle infielders; and

WHEREAS, Maury Wills became only the third African-American manager in major league baseball when he became manager of the Seattle Mariners; and

WHEREAS, Maury Wills was selected to seven major league all-star teams and was the first Most Valuable Player of an all-star game in the history of major league baseball; and

WHEREAS, Maury Wills was the 1962 National League Most Valuable Player; and

WHEREAS, Maury Wills was a fleet-footed and sure-handed fielder, earning the Gold Glove Award for fielding in 1961 and 1962 seasons and shortstop of the year in 1971, at age 39; and

WHEREAS, Maury Wills was also a major force on the winning L. A. Dodgers team for 11 years and helped lead the Dodgers to three World Series victories in 1959, 1963, and 1965 and a National League pennant victory in 1966; and

WHEREAS, Maury Wills' many athletic achievements tell the story of a true sportsman and team player, including countless awards including S. Rae Hickok Pro-Athlete Award, "Sport" magazine's Man of the Year, "Sporting News" Player of the Year, and Associated Press Athlete of the Year; and

WHEREAS, Maury Wills is a great ambassador for baseball through youth camps in the United States, Japan, Mexico, and Cuba and through media appearances and served under Governor Ronald Reagan as the Chairman of Athletics for Youth in the state of California; and

WHEREAS, Maury Wills is an intelligent, articulate, informative, and engaging personality who spent six years as a baseball analyst for NBC Sports major league baseball game of the week and one year as an HBO network in-studio sports personality; and

WHEREAS, Maury Wills was a great student of the game who was always his best in crisis situations during a game; and

WHEREAS, Maury Wills has been a trainer for 15 different major league baseball teams, teaching the art of baserunning and stealing and trained the Osaka Hankyu Braves in Japan for four years; and

WHEREAS, North Dakota is proud to be the home of the Maury Wills Museum and appreciative of his promotion of minor league professional baseball in this state through more than eight summers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly takes great pleasure in commending Maury Wills for his outstanding accomplishments in and out of major league baseball and respectively urges the Committee on Baseball Veterans of the Baseball Hall of Fame to elect Maury Wills to the Baseball Hall of Fame as well-deserved tribute to his outstanding career and exemplary conduct; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to the Committee on Baseball Veterans of the Baseball Hall of Fame.

Filed March 24, 2005

CHAPTER 676

SENATE CONCURRENT RESOLUTION NO. 4016 (Senators Every, Fairfield, Lyson, Nelson)

MISSING PERSONS INVESTIGATIONS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting a statewide procedure for conducting missing persons investigations.

WHEREAS, missing persons generally fit into categories of runaway juveniles, individuals who are missing and possibly endangered due to diminished mental capacity, and persons missing under suspicious circumstances; and

WHEREAS, as of March 2003 the Federal Bureau of Investigation National Crime Information Center reported that there were 97,297 active missing person cases in the United States, which included more than 54,000 children; and

WHEREAS, statistics indicate that 74 percent of abducted children who are murdered are dead within three hours of abduction; and

WHEREAS, in conducting a missing persons investigation, time is of the essence; and

WHEREAS, although the state of North Dakota has implemented the Amber Alert System for dealing with abducted or missing children, the state does not have a statewide procedure in place for conducting missing persons investigations;

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 adopting a statewide procedure for conducting missing persons investigations; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 677**SENATE CONCURRENT RESOLUTION NO. 4017**

(Senators Thane, Lindaas, Tallackson)
(Representatives Belter, Wall, Williams)

CAFTA OPPOSITION URGED

A concurrent resolution urging Congress not to ratify the Central American Free Trade Agreement until Congress can guarantee the citizens of this state and this country that the domestic sugar industry will not suffer economic harm as a result of the agreement's provisions.

WHEREAS, the Central American Free Trade Agreement, also known as the CAFTA, is a proposed agreement between the United States and the Central American nations of Guatemala, El Salvador, Honduras, Costa Rica, the Dominican Republic, and Nicaragua; and

WHEREAS, the office of the United States Trade Representative termed the CAFTA "a historic agreement that will eliminate tariffs and trade barriers and expand regional opportunities for the workers, manufacturers, consumers, farmers, ranchers, and service providers of all the countries"; and

WHEREAS, the CAFTA would immediately raise Central American sugar exports, thereby jeopardizing most of the sugar-producing regions in this country, including the Red River Valley and western North Dakota in this state; and

WHEREAS, the sugar beet industry provides income to many residents and infuses capital into the local, regional, and state economies; and

WHEREAS, the CAFTA will cause a significant reduction in the income of this state's sugar beet producers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States not to ratify the Central American Free Trade Agreement until Congress can guarantee the citizens of this state and this country that the domestic sugar industry will not suffer economic harm as a result of the agreement's provisions; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Trade Representative, each member of the Montana Congressional Delegation, any member of the Minnesota Congressional Delegation who serves constituents along the border between North Dakota and Minnesota, and to each member of the North Dakota Congressional Delegation.

Filed March 4, 2005

CHAPTER 678

SENATE CONCURRENT RESOLUTION NO. 4019

(Senators Bowman, Bercier)
(Representatives Klein, Schmidt)

FLAG EDUCATION URGED

A concurrent resolution urging all educators to ensure that the schoolchildren of North Dakota are taught the history of the United States flag, that they are taught to respect the flag, to exercise proper flag etiquette, and to understand that the flag is the most visible and enduring symbol of the American spirit.

WHEREAS, the United States flag is unique in the deep and noble significance of its message to the entire world, a message of national independence, of individual liberty, of idealism, and of patriotism; and

WHEREAS, the United States flag incarnates for all mankind the spirit of liberty and the glorious ideal of human freedom; and

WHEREAS, the United States flag symbolizes equal opportunity for life, liberty, and the pursuit of happiness and is safeguarded by the principles of duty, righteousness, and justice; and

WHEREAS, the United States flag embodies the essence of patriotism and the strength of the American nation; and

WHEREAS, on June 14, 1777, the Continental Congress passed an Act to establish an official flag for our new nation; and

WHEREAS, for more than 200 years, the United States flag has been the symbol of our nation's unity, as well as a source of pride and inspiration for millions of citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges all educators to ensure that the schoolchildren of North Dakota are taught the history of the United States flag, that they are taught to respect the flag, to exercise proper flag etiquette, and to understand that the flag is the most visible and enduring symbol of the American spirit; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Superintendent of Public Instruction, who shall forward electronic copies to the board of each school district, each school district administrator, and the principal of each elementary and high school in this state.

Filed March 24, 2005

CHAPTER 679

SENATE CONCURRENT RESOLUTION NO. 4020

(Senators Klein, Bowman, Urlacher)
(Representatives Belter, Kreidt, Pollert)

CANADIAN CATTLE IMPORTATION BAN URGED

A concurrent resolution urging the President of the United States and the United States Secretary of Agriculture to continue the ban on importing cattle from Canada until a full and complete investigation of Canadian feeding methods and supplies can be conducted and methods for determining risk designations can be reviewed and evaluated.

WHEREAS, the cattle industry in the United States is concerned about the plan to reopen the border to live animal imports from Canada in March 2005; and

WHEREAS, the cattle industry in the United States is concerned about the two animals that tested positive for bovine spongiform encephalopathy, including one beef cow that was born after the 1997 feed ban; and

WHEREAS, recent tests of feed samples in Canada indicated the presence of animal proteins; and

WHEREAS, further testing is needed to determine the extent of ruminant animal byproducts in feed supplies; and

WHEREAS, the United States Secretary of Agriculture must identify the country of origin, as opposed to the continent of origin, of the animals that tested positive for bovine spongiform encephalopathy; and

WHEREAS, the United States Secretary of Agriculture must study the scientific methods used to determine and define risk categories for countries within which bovine spongiform encephalopathy is known to exist;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the President of the United States and the United States Secretary of Agriculture to continue the ban on importing cattle from Canada until a full and complete investigation of Canadian feeding methods and supplies can be conducted and methods for determining risk designations can be reviewed and evaluated, and to open the border with Canada at such time as the opening of our export markets; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed February 15, 2005

CHAPTER 680

SENATE CONCURRENT RESOLUTION NO. 4021

(Senators Stenehjem, Flakoll, O'Connell)
(Representatives Berg, Boucher, Nicholas)

CUBAN TRAVEL AND BANKING URGED

A concurrent resolution urging Congress to allow for the travel of United States citizens to and from Cuba and to allow direct banking transfers between the United States and Cuba for the purchase of American-made products by Cuba.

WHEREAS, in 1962 the United States imposed economic sanctions on Cuba; and

WHEREAS, the Trade Sanctions Reform and Export Enhancement Act of 2000 reauthorized direct commercial cash-only sales of agricultural products, food, and medicine to Cuba; and

WHEREAS, many of the primary commodities produced in the United States are valued and sought after by the citizens of Cuba; and

WHEREAS, it is anticipated that sales of this state's agricultural products alone to Cuba could surpass \$37.8 million annually and provide employment for more than 1,000 individuals; and

WHEREAS, while some humanitarian and educational groups, journalists, and diplomats are allowed to visit Cuba each year, many other American citizens are not, thereby hindering efforts to expand trade with Cuba; and

WHEREAS, the United States prohibits direct banking transfers between this country and Cuba for the purchase of American-made products by Cuba, thereby reducing the level of product sales; and

WHEREAS, a recent ruling by the United States Department of the Treasury's Office of Foreign Assets Control requiring payment for United States agricultural exports in advance of shipment to Cuba threatens to jeopardize accords and terminate agricultural trade with Cuba;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges Congress to allow for the travel of United States citizens to and from Cuba and to allow direct banking transfers between the United States and Cuba for the purchase of American-made products by Cuba; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of State, the United States Secretary of Agriculture, the majority and minority leaders of the United States Senate and the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 15, 2005

CHAPTER 681

SENATE CONCURRENT RESOLUTION NO. 4023

(Senators Heitkamp, Fischer, Mathern, Nelson)
(Representatives Delmore, Monson)

LAKE AGASSIZ WATER AUTHORITY COMMENDED

A concurrent resolution expressing the Legislative Assembly's commendation and support for the efforts of the Lake Agassiz Water Authority to deliver water to eastern North Dakota.

WHEREAS, many areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; and

WHEREAS, supplementation of the water resources of eastern North Dakota with water supplies from the Missouri River or other sources of supply may be the only alternative to provide eastern North Dakota with a safe, good quality, dependable source, and adequate quantity of water; 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, and to protect and enhance economic stability and quality of life for the growing population of the Red River Basin; and

WHEREAS, failure to provide a dependable long-term water supply would jeopardize future economic opportunities dependent on water, including industry, agricultural processing, manufacturing, municipal growth, recreation, and fish and wildlife in the Red River Basin and thus adversely affect the entire state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly expresses its commendation and support for the efforts of the Lake Agassiz Water Authority to deliver water to eastern North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, State Engineer, each member of the State Water Commission, each member of the board of directors of the Lake Agassiz Water Authority, and each member of the North Dakota Congressional Delegation.

Filed April 1, 2005

CHAPTER 682

SENATE CONCURRENT RESOLUTION NO. 4024

(Senators Krauter, Bercier, Stenehjem)
(Representatives Berg, Boucher, Kerzman)

UTTC FUNDING URGED

A concurrent resolution urging Congress and the Secretary of the United States Department of the Interior to provide funding for United Tribes Technical College.

WHEREAS, United Tribes Technical College has been in continuous operation since 1969 and provides a preschool, kindergarten through grade 8 elementary school, and 20 certified and two-year technical degree programs; and

WHEREAS, United Tribes Technical College is the only intertribally controlled postsecondary vocational institution for Native Americans in the United States; and

WHEREAS, United Tribes Technical College provides comprehensive education and training programs to over 500 Native American students and 300 children from more than 15 states and 70 tribes; and

WHEREAS, United Tribes Technical College has an excellent record on job placement, averaging 80 percent in the last decade and 96 percent in 1997; and

WHEREAS, United Tribes Technical College does not receive funding under the Tribally Controlled College or University Assistance Act and must therefore rely upon the Bureau of Indian Affairs to meet its financial needs; and

WHEREAS, although a United States Department of Education study dated August 25, 2000, identified the need for over \$16 million for renovation of existing housing and instructional buildings and over \$30 million for the construction of housing and instructional buildings at United Tribes Technical College, the current administration has not included in its budget any funding for the institution's self-determination contract with the Department of the Interior, which is the base funding for United Tribes Technical College, and has provided little or no funding for improvements to campus facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States and the Secretary of the United States Department of the Interior to provide fiscal year 2006 funding in the amount of \$4.5 million for the self-determination contract the Department of the Interior has with United Tribes Technical College along with additional funding for improvements to college facilities; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of the Interior, to the President of United Tribes Technical College, and to each member of the North Dakota Congressional Delegation.

Filed March 24, 2005

CHAPTER 683**SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators Warner, Freborg, Lyson)
(Representatives Charging, Onstad)

**MISSOURI RIVER LOW-WATER REMEDIATION
URGED**

A concurrent resolution urging Congress to enact legislation to address the adverse economic impact on businesses and the economic health of North Dakota caused by the low water levels of the federally managed reservoirs on the Missouri River in North Dakota.

WHEREAS, the state of North Dakota lost more than 500,000 acres of valuable river bottom lands as a result of construction in 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 provided great benefits to the downstream states but relatively few benefits to the areas of the state directly affected by the project; and

WHEREAS, areas affected by the Pick-Sloan Missouri River dams have been working diligently to bring about some economic recovery to help alleviate the losses caused by the project during the last 50 years; and

WHEREAS, federal management of the reservoirs in North Dakota to ensure plentiful water deliveries to downstream states has led to dangerously low water conditions on the federally managed lakes in North Dakota; and

WHEREAS, the low lake levels have had a devastating impact on the businesses dependent on the lakes as well as detrimentally impacting the entire economy of North Dakota, including recreational use of the lakes;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges Congress to enact legislation to address the adverse economic impact on businesses and the economic health of North Dakota by the low water levels of the federally managed reservoirs on the Missouri River in North Dakota; 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 the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; and each member of the North Dakota Congressional Delegation.

Filed March 24, 2005

CHAPTER 684**SENATE CONCURRENT RESOLUTION NO. 4027**

(Senator Brown)
(Representative Kreidt)

DEMENTIA PROGRAMS AND SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the need for dementia-related services, standards, and practices for caregivers and review the legal and medical definitions used for dementia-related conditions and the funding for programs and services for individuals with dementias.

WHEREAS, individuals with dementias need specialized services; and

WHEREAS, there are more than 16,000 individuals in North Dakota with dementias; and

WHEREAS, the training of caregivers needs to be at a high standard to protect these incapacitated individuals; and

WHEREAS, the need for specialized services for demented individuals is unknown and the need appears not to be met; and

WHEREAS, the needs of individuals with dementias may require specialized programs and services to increase their quality of life;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the need for dementia-related services, standards, and practices for caregivers and review the legal and medical definitions used for dementia-related conditions and the funding for programs and services for individuals with dementias; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 685**SENATE CONCURRENT RESOLUTION NO. 4028**

(Senators Krauter, Erbele)
(Representatives Kerzman, Nicholas)

COUNTRY OF ORIGIN LABELING URGED

A concurrent resolution urging Congress to support mandatory country of origin labeling for all agricultural commodities.

WHEREAS, on May 13, 2002, President Bush signed into law the Farm Security and Rural Investment Act of 2002, which required country of origin labeling for beef, lamb, pork, fish, perishable agricultural commodities, and peanuts; and

WHEREAS, on January 27, 2004, President Bush signed Public Law 108-199, which delays the implementation of mandatory country of origin labeling for all covered commodities except wild and farm-raised fish and shellfish, until September 30, 2006; and

WHEREAS, responsibility for implementation of the country of origin labeling program rests with the Agricultural Marketing Service of the United States Department of Agriculture; and

WHEREAS, since 1999 North Dakota has required retailers to indicate by label the country of origin of fresh beef, lamb, and pork; and

WHEREAS, Florida, Kansas, Maine, South Dakota, and Wyoming all require some form of mandatory country of origin labeling; and

WHEREAS, country of origin labeling can provide consumers with valuable information about the source of their food; and

WHEREAS, while processors and packers have been unwilling to participate in mandatory country of origin labeling, consumers have shown overwhelming support for country of origin labeling, as well as the willingness to pay extra for such information;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Congress of the United States to make country of origin labeling mandatory for all agricultural commodities; 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 the United States Department of Agriculture, and each member of the North Dakota Congressional Delegation.

Filed March 29, 2005

CHAPTER 686

SENATE CONCURRENT RESOLUTION NO. 4029

(Senators Lyson, Flakoll, Hacker, Krebsbach)
(Representatives Clark, Iverson)

AMTRAK FUNDING URGED

A concurrent resolution urging Congress and the President to provide at least \$1.8 billion for Amtrak in fiscal year 2006 to sustain and improve the national intercity passenger rail system.

WHEREAS, Amtrak annually provides intercity passenger rail service to over 25 million Americans residing in 46 states, including as many as 89,319 passengers traveling to and from this state each year; and

WHEREAS, Amtrak through the Empire Builder has provided over 75 years of service for many rural North Dakota residents and represents the only major intercity transportation link to the rest of the country; and

WHEREAS, passenger rail provides a more fuel-efficient and cleaner transportation system, helping to reduce America's dependence on foreign oil; and

WHEREAS, Congress and the President have undercapitalized the national Amtrak system for decades, failed to provide passenger rail with a dedicated and secure source of funding as enjoyed by other modes of transportation, and has not supported passenger rail as have many other nations; and

WHEREAS, a comparable national passenger rail system in the world has not succeeded without operating subsidies;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges Congress and the President to provide at least \$1.8 billion for Amtrak in fiscal year 2006 to sustain and improve our national intercity passenger rail system; and

BE IT FURTHER RESOLVED, that the Fifty-ninth Legislative Assembly urges Congress and the President to reject efforts to eliminate long-distance routes or breakup and privatize Amtrak's intercity passenger rail operation; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed March 29, 2005

CHAPTER 687**SENATE CONCURRENT RESOLUTION NO. 4030**

(Senators Brown, O'Connell)
(Representatives Devlin, Metcalf)

LONG-TERM CARE STUDY

A concurrent resolution directing the Legislative Council to study the delivery of long-term care services in North Dakota with primary emphasis on the individual's preferred method of care, patient safety, quality of care, potential duplication of service, and the direction of state assistance.

WHEREAS, North Dakota continues to see growth in its aging and disabled population; and

WHEREAS, the overwhelming majority of the state's citizens prefer to receive long-term care services in the least restrictive environment, maintaining dignity and independence as long as possible; and

WHEREAS, long-term care services in North Dakota need to be directed toward institutionalization and alternative care; and

WHEREAS, a method of delivery and payment for institutional care, as well as the delivery and payment of home and community-based services, is necessary to limit the financial burden on the state of North Dakota, while meeting the needs and providing the preferred method of care to the individual in the long-term care continuum;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the delivery of long-term care services in North Dakota with primary emphasis on the individual's preferred method of care, patient safety, quality of care, potential duplication of service, and the direction of state assistance; 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 Sixtieth Legislative Assembly.

Filed April 6, 2005

CHAPTER 688**SENATE CONCURRENT RESOLUTION NO. 4031**

(Senators Traynor, Hacker, Nelson, Syverson, Trenbeath, Triplett)
(Judiciary Committee)

UNIFORM TRUST CODE ADOPTION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting the Uniform Trust Code.

WHEREAS, the Uniform Trust Code provides a comprehensive model for codifying the law on trusts; and

WHEREAS, the Uniform Trust Code was completed by the Uniform Law Commissioners in 2001, with amendments in 2003; and

WHEREAS, the American Bar Association and AARP have approved the Uniform Trust Code; and

WHEREAS, at least 10 states have enacted the Uniform Trust Code and a majority of the states in the nation have created study groups to review the Uniform Trust Code before enactment; and

WHEREAS, the Uniform Trust Code was introduced in North Dakota as Senate Bill No. 2122 (2005); and

WHEREAS, the North Dakota Bankers Association, North Dakota Credit Union League, and State Bar Association of North Dakota opposed revising the law on trusts as proposed by Senate Bill No. 2122; and

WHEREAS, an interim study of the Uniform Trust Code would provide opponents of a comprehensive law on trusts as provided by the Uniform Trust Code the opportunity to identify the specific provisions that would be detrimental to settlors, beneficiaries, and trustees and those provisions that should be modified to make North Dakota unique in the area of laws governing trusts;

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 adopting the Uniform Trust 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 689**SENATE CONCURRENT RESOLUTION NO. 4032**

(Senators Traynor, Hacker, Nelson, Syverson, Trenbeath, Triplett)
(Judiciary Committee)

UCC REVISED ARTICLE 1 STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting Revised Article 1 of the Uniform Commercial Code, General Provisions.

WHEREAS, the Uniform Commercial Code governs commercial transactions, including sales and leasing of goods, transfer of funds, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions; and

WHEREAS, the purpose of the Uniform Commercial Code is to establish a uniform set of rules to govern commercial transactions, which are often conducted across state lines; and

WHEREAS, since adoption of the Uniform Commercial Code in 1965, changes and developments in commercial law have resulted in revision of the entire Uniform Commercial Code between 1985 and 2003; and

WHEREAS, the Revised Article 1 clarifies when the Uniform Commercial Code is to apply to commercial transactions, allows parties to determine which laws best govern their transactions and thus promotes interstate business transactions, and promotes continued use and development of electronic transactions; and

WHEREAS, Minnesota, to which much of the commerce of this state flows, enacted Revised Article 1 in 2004; and

WHEREAS, the version of Article 1 introduced in North Dakota as Senate Bill No. 2143 (2005) was modeled on Article 1 as enacted in Minnesota; and

WHEREAS, continued economic development in this state depends on up-to-date commercial law and states outside the mainstream of advances in commercial law will be at a competitive disadvantage in attracting and maintaining commerce and industry; and

WHEREAS, the North Dakota Bankers Association and North Dakota Credit Union League opposed harmonizing the various articles of the Uniform Commercial Code through Revised Article 1; and

WHEREAS, an interim study of Revised Article 1 would provide opponents of harmonization of the various articles of the Uniform Commercial Code an opportunity to identify those provisions that should be unique to North Dakota;

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 adopting Revised Article 1, of the Uniform Commercial Code, General Provisions; 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 690**SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Every, Mathern, Wardner)
(Representatives Hawken, S. Kelsh, Nicholas)

CHILD CARE STUDY

A concurrent resolution directing the Legislative Council to study whether enhancing the quality of child care and increasing access to affordable child care would favorably impact economic development in the state.

WHEREAS, child care makes numerous contributions to quality of life in this state, including enhancing the social and intellectual development of the next generation of North Dakotans; and

WHEREAS, child care is the 10th largest occupation in the state, with annual revenues generated by the child care industry exceeding \$123 million; and

WHEREAS, North Dakota families are very reliant on the child care industry, due in part to the fact the state has one of the highest rates of multiple jobholders in the nation; and

WHEREAS, a North Dakota family with a median family income for the state, \$43,654 in 1999, spends approximately 10 to 12 percent of their gross earnings on the care of one infant; and

WHEREAS, availability of affordable, quality child care impacts the ability of the state to attract and retain businesses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study whether enhancing the quality of child care and increasing access to affordable child care would favorably impact economic development in the 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 Sixtieth Legislative Assembly.

Filed March 24, 2005

CHAPTER 691

SENATE CONCURRENT RESOLUTION NO. 4034

(Senator J. Lee)

(Representatives Koppelman, Wieland)

(Approved by the Delayed Bills Committee)

WEST FARGO PACKATAHNAS CONGRATULATED

A concurrent resolution congratulating the West Fargo High School Packatahnas for their first-place finish in the Universal Dance Association national finals.

WHEREAS, the West Fargo High School Packatahnas are the 2005 North Dakota state dance champions; and

WHEREAS, the West Fargo High School Packatahnas represented North Dakota in competition against 24 teams from across the country at the Universal Dance Association national competition in Orlando, Florida; and

WHEREAS, the members of the West Fargo High School Packatahnas spent countless hours perfecting their individual skills and their team skills; and

WHEREAS, all of their hard work, their individual and team efforts, and their dedication resulted in the West Fargo High School Packatahnas taking first place and becoming national champions in the Universal Dance Association national finals varsity high kick division;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Assembly takes great pride in extending to the West Fargo High School Packatahnas its heartiest congratulations on taking first place in the varsity high kick division and becoming national champions in the Universal Dance Association national finals; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the superintendent of the West Fargo Public School District, the principal of West Fargo High School, and to each member of the West Fargo High School Packatahnas.

Filed April 1, 2005

CHAPTER 692

SENATE CONCURRENT RESOLUTION NO. 4037

(Senator Christmann)
(Representative Devlin)

FENCE LAWS STUDY

A concurrent resolution directing the Legislative Council to study the laws pertaining to fences located outside the corporate limits of the state's cities and the relevancy of those laws in the 21st century.

WHEREAS, fences are a dominant feature of our lives and our history; and

WHEREAS, settlers have fenced millions of acres and countless rivals have seized post, rail, board, and wire to stake a claim for home and happiness; and

WHEREAS, the fences that skirt our properties define ownership and identity and allow neighbors and nations to divide and protect, as well as to offend and defend through the boundaries the fences build; and

WHEREAS, legislation regarding fences was first enacted in North Dakota in 1903 and remains substantially unchanged; and

WHEREAS, after more than 100 years, laws pertaining to fences, fence viewers, and attendant issues of liability should be reviewed to determine their relevancy in the 21st century;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the laws pertaining to fences located outside the corporate limits of the state's cities and the relevancy of those laws in the 21st century; 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 Sixtieth Legislative Assembly.

Filed March 29, 2005

CHAPTER 693

SENATE CONCURRENT RESOLUTION NO. 4038

(Senators Stenehjem, Grindberg, O'Connell)
(Representatives Berg, Boucher, Klein)

HIGHWAY AND TRANSIT FUNDING REAUTHORIZATION URGED

A concurrent resolution urging the Administration and Congress to enact promptly a well-funded and multiyear reauthorization of highway and transit programs.

WHEREAS, the Transportation Equity Act of the 21st Century (TEA-21), authorizing funding for federal-aid highway, transit, and safety programs, expired on September 30, 2003; and

WHEREAS, federal aid has continued to be passed on to the states through a series of short-term extensions; and

WHEREAS, the short-term program extensions enacted by Congress have forced states and localities to delay construction of critical highway and transit projects, including safety improvements; and

WHEREAS, further delay will increase project costs and further dilute the purchasing power of federal transportation dollars; and

WHEREAS, a well-funded federal-aid highway and transit program is essential to the economy and quality of life in North Dakota by creating and maintaining jobs in North Dakota, facilitating commerce, and enabling North Dakotans to travel safely for business and personal activities; and

WHEREAS, the formula for distribution of funds in TEA-21 provided a substantial net influx of federal transportation funds to North Dakota, which is essential and proper because our state has long stretches of federal highways and relatively few citizens to finance, maintain, and improve these highways;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Administration and Congress to enact promptly a well-funded and multiyear reauthorization of highway and transit programs; and

BE IT FURTHER RESOLVED, that under any federal funding, North Dakota's share of overall program funds be at least as favorable as the state's share under TEA-21; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, to the Secretary of the United States Department of Transportation, and to each member of the North Dakota Congressional Delegation.

CHAPTER 694**SENATE CONCURRENT RESOLUTION NO. 4039**

(Senators Cook, Freborg, G. Lee, Urlacher)

(Representatives Haas, Herbel)

(Approved by the Delayed Bills Committee)

TAX AND EDUCATION FUNDING POLICY STUDY

A concurrent resolution directing the Legislative Council to study state and local taxes and other funding sources that may be used to more equitably spread the responsibility for funding elementary and secondary education, reduce reliance on property taxes, and enhance equity and adequacy of funding for elementary and secondary education.

WHEREAS, continued concerns expressed by citizens about the current level of reliance on property taxes indicate that many citizens believe that existing tax and funding policy for elementary and secondary education is unfair to property owners and to students in property poor districts; and

WHEREAS, it is critical to all state citizens that adequate funding for elementary and secondary education be equitably allocated among tax types and taxpayers to provide stable and reliable funding to provide each student a comparable educational opportunity and allocate to each taxpayer an appropriate share of the cost of providing students a quality education; and

WHEREAS, rates and bases of taxes imposed by the state and political subdivisions must be thoroughly examined to determine whether they adequately and appropriately allocate tax burdens among taxpayers; and

WHEREAS, school funding equity and adequacy issues continue to be among the most difficult for the Legislative Assembly to resolve and have been the subject of court challenges; and

WHEREAS, the citizens of the state look to the Legislative Assembly to provide an adequate and equitable resolution of fair taxation and school funding equity and adequacy issues; and

WHEREAS, the complexity and interrelationship of equitable tax and funding policy for elementary and secondary education demands thorough study to develop proposals and background information as a starting point for consideration by the Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state and local taxes and other funding sources that may be used to more equitably spread the responsibility for funding elementary and secondary education, reduce reliance on property tax revenue and ensure the property tax relief is permanent, and enhance equity and adequacy of funding for elementary and secondary education; and

BE IT FURTHER RESOLVED, that the interim committee to which the Legislative Council assigns this study may adopt and forward to the Legislative Council proposed legislation without committee recommendation; 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 Sixtieth Legislative Assembly.

Filed April 13, 2005

CHAPTER 695

SENATE CONCURRENT RESOLUTION NO. 4040

(Senators Heitkamp, O'Connell, Stenehjem)
(Representatives Berg, Boucher, Hawken)
(Approved by the Delayed Bills Committee)

MARIS HOME RUN RECORD REINSTATEMENT URGED

A concurrent resolution urging the Commissioner of Major League Baseball to reinstate Roger Maris as holder of the single-season major league baseball home run record.

WHEREAS, during the first 127 seasons of major league baseball no player recorded more than the 61 home runs hit by Roger Maris in 1961; and

WHEREAS, in a span of four years the single-season high number of home runs from the first 127 seasons of major league baseball was surpassed six times by three players, and the likelihood of this occurrence is so statistically remote as to tax the faith of any baseball fan, and each player to perform this feat is widely suspected of using performance-enhancing substances; and

WHEREAS, the Congress of the United States has seen fit to conduct hearings to investigate the extent of usage of performance-enhancing substances by major league baseball players; and

WHEREAS, baseball fans, more than any other sports fans, cherish the records and history of the game and the integrity of the players who rightfully deserve to be recognized for excelling without cheating; and

WHEREAS, a thorough review of the validity of baseball records should be initiated by reinstating the Roger Maris single-season home run record, with the objective of reinstating the integrity of baseball by restoring records to those who have established them through physical and mental ability without the aid of performance-enhancing substances;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly urges the Commissioner of Major League Baseball to reinstate the single-season major league home run record established by Roger Maris as the valid single-season home run record for major league baseball; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Commissioner of Major League Baseball, the family of Roger Maris, and each member of the United States Congress.

Filed April 15, 2005

HOUSE MEMORIAL RESOLUTION

CHAPTER 696

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 welcomed to their eternal home our former colleagues:

Archie Borstad, who served in the 39th Legislative Assembly, from District 20, died November 23, 2003;

Linda Christenson, who served in the 54th and 55th Legislative Assemblies, from District 18, died July 28, 2004;

James O. Coats, who served in the 52nd through the 55th Legislative Assemblies, from District 34, died January 28, 2005;

Walter C. Erdman, who served in the 48th Legislative Assembly, from District 6, died September 25, 2004;

Ivan Erickson, who served in the 27th Legislative Assembly and in the 30th through the 34th Legislative Assemblies, from District 40, died February 5, 2005;

Kenneth Erickson, who served in the 41st and 42nd Legislative Assemblies, from District 26, died May 12, 2003;

Frances V. Froeschle, who served in the 39th Legislative Assembly, from District 9, died April 8, 2004;

Donald Giffey, who served in the 37th through the 39th Legislative Assemblies, from District 46, and in the 40th through the 42nd Legislative Assemblies, from District 8, died August 22, 2004;

Glen Goodman, who served in the 38th Legislative Assembly, from District 18, and in the 40th and 41st Legislative Assemblies, from District 10, died February 22, 2005;

Glenn Henning, who served in the 41st and 42nd Legislative Assemblies, from District 6, died February 26, 2003;

Thelmer Ivesdal, who served in the 39th Legislative Assembly, from District 21, died January 17, 2005;

James W. Kennelly, who served in the 46th Legislative Assembly, from District 45, died March 3, 2004;

Herman Larson, who served in the 46th and 47th Legislative Assemblies, from District 7, died February 7, 2004;

Joe B. Leibhan, who served in the 40th and 41st Legislative Assemblies, the 43rd and 44th Legislative Assemblies, and the 46th Legislative Assembly, from District 12, died February 22, 2004;

Harold T. Morrison, who served in the 27th and 28th Legislative Assemblies, from District 35, died February 15, 2004;

Corliss Mushik, who served in the 42nd Legislative Assembly and the 44th through the 48th Legislative Assemblies, from District 34, died July 4, 2004;

Fred E. Nagel, who served in the 47th Legislative Assembly, from District 33, died October 6, 2003;

Curtis Olson, who served in the 27th through the 29th Legislative Assemblies, from District 15, died October 15, 2004;

Bill Pietsch, who served in the 57th Legislative Assembly, from District 22, died July 15, 2004;

Robert F. Reimers, who served in the 37th through the 39th Legislative Assemblies, from District 23, and in the 40th through the 44th Legislative Assemblies, from District 29, died September 3, 2003;

Richard Rocheleau, who served in the 42nd Legislative Assembly, from District 12, and in the 44th and 45th Legislative Assemblies, from District 7, died February 22, 2004;

Leland Roen, who served in the 32nd through the 34th Legislative Assemblies, from District 39, died May 22, 2003;

Dale C. Severson, who served in the 56th through the 58th Legislative Assemblies, from District 23, died November 4, 2003;

Thomas R. Stallman, who served in the 36th through the 39th Legislative Assemblies, from District 37, died September 30, 2004;

Elmer Strand, who served in the 34th Legislative Assembly and in the 36th Legislative Assembly, from District 8, died July 17, 2004;

Willard Strege, who served in the 34th Legislative Assembly and in the 36th Legislative Assembly, from District 37, died July 1, 2003;

Janet Wentz, who served in the 44th Legislative Assembly, from District 5; in the 45th through the 52nd Legislative Assemblies, from District 41; and in the 53rd through the 58th Legislative Assemblies, from District 3, died September 15, 2003;

Carl A. White, who served in the 41st and 42nd Legislative Assemblies, from District 21, died January 23, 2004; 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 April 6, 2005

SENATE MEMORIAL RESOLUTION

CHAPTER 697

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:

Linda Christenson, who served in the 57th and 58th Legislative Assemblies, from District 18, died July 28, 2004;

Glenn R. Dolan, who served in the 34th and 35th Legislative Assemblies, from District 2, died May 1, 2004;

Walter C. Erdman, who served in the 42nd through the 46th Legislative Assemblies, from District 6, died September 25, 2004;

Donald C. Holand, who served in the 34th through the 39th Legislative Assemblies, from District 14; in the 40th and 41st Legislative Assemblies, from District 27; and in the 42nd and 43rd Legislative Assemblies, from District 21; died December 26, 2003;

Joe B. Leibhan, who served in the 47th and 48th Legislative Assemblies, from District 12, died February 22, 2004;

Evan E. Lips, who served in the 37th through the 39th Legislative Assemblies, from District 27; in the 40th through the 44th Legislative Assemblies, from District 32; and in the 45th through the 55th Legislative Assemblies, from District 47; died January 9, 2005;

Corliss Mushik, who served in the 49th through the 54th Legislative Assemblies, from District 34, died July 4, 2004;

Ron Quail, who served in the 47th Legislative Assembly, from District 38, died June 4, 2003;

Leland Roen, who served in the 35th through the 43rd Legislative Assemblies, and the 46th and 47th Legislative Assemblies, from District 39, died May 22, 2003; 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 28, 2005