

GENERAL PROVISIONS

CHAPTER 54

HOUSE BILL NO. 1039

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact subdivision a of subsection 2 of section 14-15-17, section 15-12-25, subsections 2 and 3 of section 15-52-03, sections 23-34-02, 23-34-02.1, 43-04-40, 43-53-04, 50-06-05.1, 57-38-30, and 57-43.2-02.3, subsection 1 of section 61-06-13, subsection 5 of section 61-07-03, section 61-11-03, and subdivision a of subsection 2 of section 65-02-03.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 4-32-09 and 40-05-21 of the North Dakota Century Code, relating to obsolete provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 14-15-17 of the North Dakota Century Code is amended and reenacted as follows:

2. a. To obtain a validation of a foreign decree of adoption, the adoptive parent shall provide to the court a petition for validation of foreign adoption, an admission stamp in the adopted individual's passport which indicates that the individual was admitted to the United States with an IH-3 or IR-3 visa, the individual's foreign birth certificate and English translation, the individual's foreign adoption decree and English translation, and a signed affidavit from the agency which states that the foreign adoption is valid and which states the name by which the individual is to be known. The petition for validation of foreign adoption must be signed and verified by the petitioner, filed with the clerk of the court, and state:
 - (1) The date and place of birth of the individual to be adopted, if known;
 - (2) The name to be used for the individual whose foreign adoption decree is being petitioned for validation;
 - (3) The date the petitioner acquired custody or the date of placement of the individual and the name of the foreign country's placing agency;
 - (4) The full name, age, place, and duration of residence of the petitioner; and
 - (5) The marital status of the petitioner, including the date and place of marriage, if married.

SECTION 2. AMENDMENT. Section 15-12-25 of the North Dakota Century Code is amended and reenacted as follows:

15-12-25. Grants and contributions - Continuing appropriation.

The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, limited liability companies, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of sections 15-12-22 through 15-12-26. ~~Any state funding for the institute may be provided through legislative appropriation to technology transfer, incorporated, for that purpose.~~

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 15-52-03 of the North Dakota Century Code are amended and reenacted as follows:

2. The council consists of fifteen members:
 - a. (1) Two members of the senate, one of whom must be from the majority party and one of whom must be from the minority party, selected by the chairman of the legislative management; and
 - (2) Two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party, to be selected by the chairman of the legislative management;
 - b. One member selected by each of the following:
 - (1) The department of human services;
 - (2) The state board of higher education;
 - (3) The state department of health;
 - (4) The North Dakota medical association;
 - (5) The North Dakota ~~healthcare~~ hospital association;
 - (6) The veterans administration hospital in Fargo; and
 - (7) The university of North Dakota center for rural health; and
 - c. Four members selected by the dean of the university of North Dakota school of medicine and health sciences, one from each of the four campuses of the school of medicine and health sciences with headquarters in Bismarck, Fargo, Grand Forks, and Minot.
3. The representatives named by the state agencies and boards must be selected to serve as members of the advisory council for periods of at least one year, but may not serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota ~~healthcare~~ hospital association shall serve a term of three years or until their successors are named and qualified.

SECTION 4. AMENDMENT. Section 23-34-02 of the North Dakota Century Code is amended and reenacted as follows:

23-34-02. Peer review records - Confidentiality.

1. Peer review records are confidential and may be used by a peer review organization and the organization members only for conducting a professional peer review.
2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the state department of health, the North Dakota ~~healthcare~~hospital association, and the North Dakota hospital foundation.
3. The state department of health, the North Dakota ~~healthcare~~hospital association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.
4. This section does not prohibit access of the state department of health to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under section 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

SECTION 5. AMENDMENT. Section 23-34-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-34-02.1. Peer review organization reports - Admissibility.

Any report, data, data compilation, analyses, or summary that is generated by a peer review organization and made available to the state department of health or the public by the state department of health, the North Dakota ~~healthcare~~hospital association, or the North Dakota hospital foundation, may not be introduced into evidence, for any purpose, in any civil or administrative proceeding.

SECTION 6. AMENDMENT. Section 43-04-40 of the North Dakota Century Code is amended and reenacted as follows:

43-04-40. Refusal and revocation of certificate.

The board either may refuse to issue or renew a certificate of registration to practice barbering or may suspend or revoke the same for any one, or a combination, of the following causes:

1. Conviction of an offense, shown by a certified copy of the record of conviction, determined by the board to have a direct bearing upon a person's ability to serve the public as a barber, or the board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
2. Gross malpractice or gross incompetency.
3. Continued practice by a person knowingly having an infectious or contagious disease.

4. Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drug.
5. Advertising by means of knowingly false or deceptive statements.
6. Immoral and unprofessional conduct.
7. When satisfied that any such person has violated any provision of this chapter.
8. Repeated violations of the ~~sanitary rules and regulations of the state board of health and board of barber examiners~~ governing the sanitary ~~regulations~~regulation of barbershops and barber schools.

SECTION 7. AMENDMENT. Section 43-53-04 of the North Dakota Century Code is amended and reenacted as follows:

43-53-04. Marriage and family ~~therapist~~therapy licensure board.

1. The North Dakota marriage and family ~~therapist~~therapy 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.

SECTION 8. AMENDMENT. Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.1. Powers and duties of the department.

The department has the following powers and duties to be administered by the department through its state office or through regional human service centers or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or

through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.

11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child care facilities, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if determined to be necessary.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the developmental center at westwood park, Grafton, state hospital, or North Dakota youth correctional center.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
17. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative management may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.

18. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
19. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the budget section of the legislative management may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
20. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
21. To exercise and carry out any other powers and duties granted the department under state law.
22. To coordinate services for pregnant women.
23. To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:
 - a. "Transitional living facility" means a specific site, identified by a licensed child-placing agency and approved by the department, for the provision of transitional living services.
 - b. "Transitional living program" means a program that provides transitional living services and may include an identified program operations location approved by the department.

- c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.
24. With the approval of the governor, to lease or transfer use of any part of the developmental center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
 - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the developmental center.
 - b. The transaction is exempt from the provisions of section 50-06-06.6.
 - c. The term of any lease may not exceed ninety-nine years.
 - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any funds realized by any transaction must be deposited in the state's general fund.
25. To act as a decedent's successor for purposes of collecting amounts due to the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
26. To provide those services necessary for the department and for county social service boards to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
- ~~27. To provide for the qualifications for and the membership of a qualified board as required by section 12-1-32-15.~~
- ~~28.~~ For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
- 29-28. 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.

¹⁴ **SECTION 9. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations.

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. ~~a.~~ For the first twenty-five thousand dollars of taxable income, at the rate of two and one-tenth percent.
- ~~b.2.~~ On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of five and twenty-five hundredths percent.
- ~~c.3.~~ On all taxable income exceeding fifty thousand dollars, at the rate of six and four-tenths percent.
2. ~~A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.~~

SECTION 10. AMENDMENT. Section 57-43.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and after that date is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03.~~ Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
2. Special fuel, other than diesel fuel, sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of one percent under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer.~~ Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section~~

¹⁴ Section 57-38-30 was also amended by section 6 of House Bill No. 1047, chapter 457.

~~57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.~~

3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

SECTION 11. AMENDMENT. Subsection 1 of section 61-06-13 of the North Dakota Century Code is amended and reenacted as follows:

1. At least fifteen days before an election in an irrigation district, the secretary shall prepare and have ~~typewritten, mimeographed, or printed~~ an official ballot containing the names of all candidates which have been filed with the secretary. The ballot must:
 - a. Be headed "Official Ballot";
 - b. Contain all names thus filed;
 - c. Show the name of the district;
 - d. State the number of individuals to be voted for;
 - e. Have blank spaces below for writing in other names; and
 - f. State any question or resolution submitted to the electors by the board of directors.

SECTION 12. AMENDMENT. Subsection 5 of section 61-07-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Establish bylaws and rules for distribution to and for the information of electors of the district and water users, and fix charges or rentals to be paid by water users. The bylaws and rules shall be ~~printed, typewritten, or mimeographed~~ in convenient form.

SECTION 13. AMENDMENT. Section 61-11-03 of the North Dakota Century Code is amended and reenacted as follows:

61-11-03. Ballots to be provided - Form.

The board shall provide ~~printed, typewritten, or mimeographed~~ ballots for an election held pursuant to the provisions of this chapter. Such ballots shall be substantially in the following form:

The irrigation district of _____ County, North Dakota, shall be dissolved and its property sold:

Yes

No

The board shall cause such ballots to be prepared at least fifteen days before the election and shall place the ballots in the hands of the election officers of the district prior to the opening of the polls on the day of such election.

SECTION 14. AMENDMENT. Subdivision a of subsection 2 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. 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 member for an employer representative from a list of three potential candidates submitted by a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota ~~health care~~ hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.

SECTION 15. REPEAL. Sections 4-32-09 and 40-05-21 of the North Dakota Century Code are repealed.

Approved April 18, 2011
Filed April 18, 2011

CHAPTER 55

HOUSE BILL NO. 1167

(Representatives Grande, Heller, R. Kelsch)
(Senators Krebsbach, Sitte, Nelson)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to women veterans' month; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is created and enacted as follows:

Women Veterans' Month.

March of each year is Women Veterans' Month. Each year the governor shall issue a proclamation on March first in honor and remembrance of surviving and departed women veterans who have served honorably and with courage on behalf of the United States of America since the American Revolutionary War.

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

Approved March 29, 2011
Filed March 29, 2011

CHAPTER 56

SENATE BILL NO. 2330

(Senators Schaible, Klein)
(Representatives Guggisberg, S. Kelsh)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to fallen firefighters memorial weekend.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is created and enacted as follows:

Firefighters memorial weekend.

Each year the governor shall issue a proclamation designating the dates of the national fallen firefighters memorial weekend as the North Dakota fallen firefighters memorial weekend and require that flags at state buildings be flown at half staff.

Approved April 25, 2011

Filed April 25, 2011