

OCCUPATIONS AND PROFESSIONS

CHAPTER 305

HOUSE BILL NO. 1469

(Representatives Kasper, Carlson, Ruby, Sukut)
(Senators Nodland, Schneider)

AN ACT to amend and reenact sections 43-03-02, 43-03-09, and 43-03-15 of the North Dakota Century Code, relating to regulation of architects; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

43-03-02. Persons exempt from regulations.

1. The architect registration provisions of this chapter do not apply to:
 - a. A person supervising the erection, enlargement, or alteration of a building; or
 - b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:
 - (1) A private residence;
 - (2) A building that under applicable building code ~~is not designed for occupancy by ten or more individuals~~, does not exceed two stories in height exclusive of a one-story basement, and is:
 - (a) A garage;
 - (b) A ~~commercial or industrial~~ building not considered to have a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I;
 - (c) ~~An office~~A building considered to have a primary building code occupancy classification of assembly groups A-2, A-3, A-4, or A-5; business group B; factory industrial group F; mercantile group M; or residential group R;
 - (d) A preengineered metal building;

- (e) A building for the marketing, storage, or processing of farm products; or
- (f) A warehouse; ~~or~~
- ~~(g)(3)~~ Rental apartment units that do not exceed three stories in height exclusive of a one-story basement;
- ~~(3)(4)~~ A farm building; or
- ~~(4)(5)~~ A nonstructural alteration of any nature to any building if the alteration does not affect the safety of the occupants of the building building remodeling or an addition or both, which does not change its use to a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I.
2. The landscape architect registration provisions of this chapter do not apply to:
- An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;
 - A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare;
 - An individual in the course of planning or otherwise caring for that individual's property; or
 - An irrigation designer, contractor, or service provider in the course of preparing irrigation plans or installing, repairing, or maintaining irrigation systems.
3. This chapter does not:
- Apply to an officer or employee of the United States government while engaged in governmental work in this state;
 - Curtail or extend the right of any other profession regulated in this state;
 - Prevent the independent employment of a registered professional engineer for any professional service related solely to civil, structural, mechanical, or electrical engineering in connection with any building or building project; or
 - Supersede, override, or amend the provisions of chapter 43-19.1 regarding registration of professional engineers and land surveyors or chapter 43-07 regarding registration of contractors.

SECTION 2. AMENDMENT. Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

43-03-09. Prohibited acts - Injunction.

1. A person may not practice architecture in this state unless registered as an architect under this chapter or otherwise authorized by the board. A person

may not practice landscape architecture in this state unless registered as a landscape architect under this chapter or otherwise authorized by the board.

2. A person may not fraudulently obtain or furnish a certificate of registration to practice architecture or landscape architecture.
3. A person that is not ~~licensed~~registered under this chapter may not:
 - a. Advertise, represent, or in any manner hold that person out as an architect or landscape architect;
 - b. In connection with the person's business or name, or otherwise, assume, use, or advertise any term, title, or description or engage in any other conduct that reasonably might be expected to mislead another to believe the person is an architect or landscape architect; or
 - c. Except as a copartnership of architects, engage in the practicesolicitation of architecture or landscape architecture services as an individual or corporation.
4. Through the attorney general, the board may seek to enjoin a person from committing an act in violation of this chapter. The board is not required to prove irreparable injury to enjoin a violation of this chapter.

SECTION 3. AMENDMENT. Section 43-03-15 of the North Dakota Century Code is amended and reenacted as follows:

43-03-15. When examination not necessary.

The board may admit a nonresident applicant seeking to register to practice architecture or landscape architecture in North Dakota without requiring the applicant to pass an examination if the applicant is licensed or registered to practice architecture or landscape architecture under the laws of any other state that has requirements substantially equal to those provided for under this chapter. An applicant under this section shall pay the fees provided for under section 43-03-18.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 2011
Filed April 15, 2011

CHAPTER 306

HOUSE BILL NO. 1063

(Representatives Frantsvog, Klein)
(At the request of the Board of Barber Examiners)

AN ACT to amend and reenact subsections 1 and 2 of section 43-04-42 of the North Dakota Century Code, relating to barber licensing fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 43-04-42 of the North Dakota Century Code are amended and reenacted as follows:

1. The board may charge applicants the following fees:
 - a. For examination and issuance of a certificate to practice master barbering, one hundred dollars.
 - b. For examination and issuance of a certificate to practice as an apprentice barber, fifty dollars.
 - c. For renewal of a master barber's certificate, ~~fifty~~one hundred dollars.
 - d. For restoration of an expired master barber's certificate, a ~~ten~~twenty dollar penalty fee in addition to the regular renewal fee.
 - e. For renewal of an apprentice barber's certificate, twenty dollars.
 - f. For restoration of an expired apprentice barber's certificate, a ~~ten~~twenty dollar penalty fee in addition to the regular renewal fee.
 - g. For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
 - h. For issuance of an annual barbershop license, ~~thirty-five~~fifty dollars, to be paid by each shopowner in advance.
 - i. For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred ~~twenty-five~~seventy-five dollars.
 - j. For restoration of an expired barbershop license, a ~~ten~~twenty dollar penalty fee in addition to the annual license fee.
 - k. For renewal of an instructor's license, twenty-five dollars.
2. Each application to open or establish a barbershop in this state must be accompanied by a fee of ~~fifty~~one hundred dollars to cover expenses of inspection, which must be retained by the board and deposited as other fees.

Approved March 9, 2011
Filed March 9, 2011

CHAPTER 307

SENATE BILL NO. 2100

(Government and Veterans Affairs Committee)
(At the request of the State Electrical Board)

AN ACT to amend and reenact sections 43-09-04 and 43-09-20 of the North Dakota Century Code, relating to electricians; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-04 of the North Dakota Century Code is amended and reenacted as follows:

43-09-04. Officers of board - Compensation of members.

The members of the board shall select from their members a president, a treasurer, and a secretary. Each appointive member of the board ~~shall be entitled to receive such amount as may be set by the board but not more than fifty dollars per day for the actual services rendered,~~ and in addition thereto, each member shall receive the necessary and actual expenses incurred by the member in the discharge of the member's duties. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09.

SECTION 2. AMENDMENT. Section 43-09-20 of the North Dakota Century Code is amended and reenacted as follows:

43-09-20. Contract for installation of electrical wiring and installation of electrical equipment made with master electrician - Requirement for liability insurance.

No contract, agreement, or undertaking with another for the installation of electrical wiring or the installation of electrical parts of other apparatus may be entered into by anyone not a master electrician. A class B electrician, as herein defined, is authorized to enter into a contract, undertaking, or agreement for the installation of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of two thousand five hundred or less population, and the electrician's authority under the contract, undertaking, or agreement is limited to the actual installation by that electrician of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of two thousand five hundred or less population, and the installation of electrical equipment, appliances, and apparatus used on farmsteads and such residences. Before an electrician referred to in this section enters into a contract for installation of electrical wiring, the electrician shall deposit with the board evidence of the existence of public liability insurance with a licensed insurance carrier, with policy limits of at least ~~one~~five hundred thousand dollars for a master electrician, and ~~five~~two hundred five thousand dollars for a class B electrician.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - COMPENSATION FOR MEMBERS OF BOARDS AND COMMISSIONS. During the 2011-12 interim, the legislative management shall consider studying the statutory provisions setting

compensation rates for members of executive branch boards and commissions to determine whether it may be desirable to standardize some or all of the compensation rate provisions. The legislative management may limit the study to occupational boards and commissions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 308

SENATE BILL NO. 2098

(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

AN ACT to create and enact a new subsection to section 43-11-02 of the North Dakota Century Code, relating to exemption from cosmetology licensure; and to amend and reenact sections 43-11-01, 43-11-03, 43-11-04, and 43-11-06, subsection 7 of section 43-11-16, sections 43-11-21, 43-11-24, 43-11-25, and 43-11-26, subdivision b of subsection 1 of section 43-11-28, and section 43-11-31 of the North Dakota Century Code, relating to fees, the practice and licensing of cosmetologists, cosmetology salons, estheticians, instructors, manicurists, and schools, and the powers, membership, and compensation of the state board of cosmetology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
3. "Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology includes the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to remove hair, beautifying, or similar work on the body, or manicuring the nails of any person.
- ~~3.4.~~ "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.
- ~~4.5.~~ "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

- 5-6. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
- 6-7. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- 7-8. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
- a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and
 - b. Chemical peels, except for chemical peels using:
 - (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;
 - (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or
 - (3) Two percent resorcinol with a pH of 3.0 or higher.
- 8-9. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- 9-10. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- 40-11. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.~~
12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the body of any person. The term does not include invasive care.
14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. A new subsection to section 43-11-02 of the North Dakota Century Code is created and enacted as follows:

Skin care provided under the supervision, control, and responsibility of a physician in the hospital, clinic, or physician's office.

SECTION 3. AMENDMENT. Section 43-11-03 of the North Dakota Century Code is amended and reenacted as follows:

43-11-03. State board of cosmetology - Appointment - Term - Removal.

The state board of cosmetology consists of ~~three~~five members appointed by the governor for three years each, with their terms of office so arranged that ~~one term expires~~no more than two terms expire on June thirtieth of each year. Each member shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board must be filled by appointment by the governor for the unexpired term.

SECTION 4. AMENDMENT. Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

43-11-04. Members of board - Qualifications.

Each member of the board must be a citizen of this state ~~and~~. Three of the members of the board must each be a licensed cosmetologist who has had at least three years' practical experience in the occupation. The other two members of the board must be citizen members, at least one of whom has professional experience as a secondary teacher or as a postsecondary educator.

SECTION 5. AMENDMENT. Section 43-11-06 of the North Dakota Century Code is amended and reenacted as follows:

43-11-06. Compensation of members of board - How paid.

Each member of the board is entitled to receive compensation ~~of one hundred dollars in the amount provided for members of the legislative management under section 54-35-10~~ for each day employed in the actual discharge of official duties, as determined by the board. ~~The secretary of the board shall receive an annual salary of not more than thirteen thousand dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties.~~ Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

SECTION 6. AMENDMENT. Subsection 7 of section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

7. Agrees not to:

- a. ~~Conduct a clinical department for fees after licensure by the board, until the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;~~
- b. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter; or
- e-b. Compensate any of its basic students in any way; and

SECTION 7. AMENDMENT. Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

43-11-21. Operator's Cosmetologist license - Examination required - Application - Examination - Fees.

Each person who desires to secure an ~~operator's~~ a cosmetologist license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by all of the following:

1. Satisfactory proof of the educational qualifications required of a student; ;
2. An examination fee as may be fixed by the board pursuant to section 43-11-28; ;
3. Satisfactory proof that the applicant has completed the required training in a school of cosmetology; ~~and~~ ;
4. A fee for original licensure as required by section 43-11-28.

SECTION 8. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's Cosmetologist license - When issued - Failure to pass examination - Reexamination - Retraining.

~~An operator's~~ A cosmetologist license must be issued to any person who has met all the following requirements:

1. Complied with section 43-11-21; ~~and~~ ;
2. Passed to the satisfaction of the board the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. An applicant who fails to pass the ~~first reexamination~~ practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology before applying for a second reexamination.

SECTION 9. AMENDMENT. Section 43-11-25 of the North Dakota Century Code is amended and reenacted as follows:

43-11-25. License issued without examination - Conditions.

The board may dispense with the examination of applicants for licenses to practice cosmetology and may grant licenses upon the payment of a fee for original licensure and the reciprocity fee ~~provided in section 43-11-28~~ if all the following requirements are met:

1. The applicant has complied with the requirements for registration of the District of Columbia, or another state, territory, foreign country, or province where the requirements are equal substantially to those in force in this state at the time the application for the license is filed; ~~and,~~
2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

SECTION 10. AMENDMENT. Section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

43-11-26. Manager-operator - License - Qualifications.

~~A person~~An individual may obtain a manager-operator's license upon meeting all the following requirements:

1. Furnishing to the board evidence of having practiced as a ~~licensed operator~~cosmetologist for at least ~~one hundred twenty-five days;~~one thousand hours.
2. Paying an original licensure fee as set forth in section 43-11-28; ~~and,~~
3. Complying with the other requirements of this chapter applicable to a manager-operator.

SECTION 11. AMENDMENT. Subdivision b of subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

b. Examinations:

- | | |
|--|--------------------|
| (1) Operator <u>practical examination</u> | \$25.00 |
| (2) Instructors <u>practical examination</u> | \$55.00 |
| (3) Reexamination fee, operator's | |
| (a) Practical | \$30.00 |
| (b) Written | \$20.00 |
| (4) Reexamination fee, instructor's | |
| (a) Practical | \$55.00 |
| (b) Written | \$25.00 |
- Written examination fees are set and collected by the administrator of the examination and payment is the responsibility of the applicant.

SECTION 12. AMENDMENT. Section 43-11-31 of the North Dakota Century Code is amended and reenacted as follows:

43-11-31. License - Refusal to grant - Grounds.

The board may ~~refuse to grant a license which may be issued under this chapter to any person who~~ deny an application or discipline a licensee on any of the following grounds:

1. ~~Is guilty of fraud~~ Fraud in passing the examination; ~~;~~
2. ~~Is guilty~~ Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public ~~as a cosmetologist in a profession licensed by the board,~~ or ~~who,~~ following conviction of any offense, the board determines the person is not sufficiently rehabilitated under section 12.1-33-02.1; ~~;~~
3. ~~Is guilty of grossly~~ Grossly unprofessional or dishonest conduct; ~~;~~
4. ~~Is addicted~~ Addiction to the use of intoxicating liquor or drugs to such an extent as to render the person unfit to practice cosmetology; ~~;~~
5. Advertises Advertising by means of knowingly false or deceptive statements;
6. ~~Fails~~ Failure to display the license as provided in this chapter; ~~or~~ ~~;~~
7. ~~Violates~~ Violation of the provisions of this chapter or the rules adopted by the board.
8. Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or teaching in a cosmetology salon or school of cosmetology.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 309

SENATE BILL NO. 2148

(Senators J. Lee, Bowman, Heckaman)
(Representatives Devlin, Kreidt, Vigesaa)

AN ACT to amend and reenact section 43-12.1-18 of the North Dakota Century Code, relating to prescriptive practice standards for advanced practice registered nurses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-18. Nursing practice standards.

The board shall adopt rules establishing standards for nursing practice. ~~The board shall consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses.~~ Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse ~~and include evidence of a collaborative agreement with a licensed physician.~~

Approved April 1, 2011
Filed April 1, 2011

CHAPTER 310

SENATE BILL NO. 2035

(Legislative Management)
(Health and Human Services Committee)

AN ACT to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to pharmacist administration of immunizations and vaccinations to minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administration" means the direct application of a drug to the body of a patient.
 - a. The term includes:
 - (1) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available;
 - (2) Upon an order by a physician, a physician assistant, or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner and subsequently reported as a childhood immunization and other information if required to the state's immunization information system pursuant to section 23-01-05.3:
 - (a) ~~Immunization and vaccination by injection of an individual who is more than eighteen at least eleven~~ years of age, ~~upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner;~~ and
 - (b) Influenza vaccination by injection or by live, attenuated influenza vaccine of an individual who is at least five years of age; and
 - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is ~~more than at least~~ eighteen years of age upon the order of a physician, a physician assistant, or nurse practitioner authorized to prescribe such a drug.
 - b. The term does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 311

SENATE BILL NO. 2080

(Agriculture Committee)
(At the request of the State Board of Pharmacy)

AN ACT to create and enact a new subsection to section 43-15-02, a new subsection to section 43-15-10, and chapter 43-15.4 of the North Dakota Century Code, relating to the practice of pharmacy and dispensing veterinary prescription drugs; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-15-02 of the North Dakota Century Code is created and enacted as follows:

A veterinary dispensing technician operating within a veterinary retail facility.

SECTION 2. A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To adopt, amend, and repeal rules as may be deemed necessary by the board to register veterinary dispensing technicians pursuant to qualifications established by the board, to charge a veterinary dispensing technician an annual registration fee not to exceed fifty dollars, to provide for suspension or revocation of a veterinary dispensing technician's registration, to provide for suspension or revocation of a veterinary retail facility's license, to regulate and control veterinary retail facilities, and to regulate and control veterinary dispensing technicians.

SECTION 3. Chapter 43-15.4 of the North Dakota Century Code is created and enacted as follows:

43-15.4-01. Definitions.

As used in this chapter:

1. "Board" means the state board of pharmacy.
2. "Compound" means the preparation, mixing, assembling, packaging, or labeling of a drug or device.
3. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in chapter 19-03.
4. "Dispensing" means the delivery of a veterinary prescription drug pursuant to the lawful order of a licensed veterinarian and the associated recordkeeping that is relevant to that practice.
5. "Extra-label use" means the use of an approved drug in a manner that is not in accordance with the approved label directions.

6. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.
7. "Veterinary prescription drugs" means drugs that are to be used or prescribed only within the context of a valid veterinarian-client-patient relationship. Veterinary prescription drugs are those drugs restricted by federal law to use by or on the order of a licensed veterinarian.
8. "Veterinarian-client-patient relationship" means:
 - a. A veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the instructions of the veterinarian.
 - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal.
 - c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy. This relationship exists only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal and by medically appropriate and timely visits to the premises where the animal is kept.
9. "Veterinary dispensing technician" means a nonpharmacist registered by the board to dispense veterinary prescription drugs in a veterinary retail facility.
10. "Veterinary retail facility" means an establishment registered by the board employing a registered veterinary dispensing technician authorized to dispense veterinary prescription drugs pursuant to bona fide orders of veterinarians.

43-15.4-02. Exemptions.

The provisions of this chapter do not apply to the following:

1. A pharmacist or a pharmacy participating in the practice of pharmacy.
2. A licensed veterinarian or a veterinarian's practice.

43-15.4-03. Veterinary retail facility - Permit required.

A person, copartnership, association, corporation, or limited liability company may not open, establish, operate, maintain, or do business in the state of North Dakota, a veterinary retail facility without first obtaining a permit to do so from the board. Application for a permit must be made upon a form prescribed and furnished by the board and must be accompanied by a fee set by the board not to exceed three hundred dollars. A like fee must be paid upon each annual renewal thereof. Separate applications must be made and separate permits required for each veterinary retail facility opened, established, operated, or maintained by the same owner and for the change of location, name, or ownership of an existing veterinary retail facility.

43-15.4-04. Minimum standards for veterinary retail facilities.

The following standards apply to veterinary retail facilities:

1. Veterinary prescription drugs dispensed by a veterinary retail facility pursuant to a licensed veterinarian's prescription are for use on equidae, food-animals, and nontraditional livestock only.
2. Veterinary dispensing technicians may not:
 - a. Dispense controlled substances.
 - b. Compound veterinary prescription drugs for the dispensing of a prescription.
 - c. Repackage veterinary prescription drugs for the dispensing of a prescription, except that a veterinary dispensing technician may break down case lots of veterinary prescription drugs, provided the seals on the individual containers are not broken. Veterinary dispensing technicians may not open a container and count out or measure out any quantity of a veterinary prescription drug.
 - d. Dispense medication for extra-label use.
3. Veterinary prescription drugs returned to a veterinary retail facility from a client must be treated as damaged or outdated drugs. Returned drugs may not be returned to stock or dispensed, distributed, or resold.
4. A veterinary dispensing technician may dispense veterinary prescription drugs for use on equidae, food-animals, and nontraditional livestock on the basis of a written, electronically transmitted, or oral order received from a licensed veterinarian or the authorized agent of a licensed veterinarian. Only a veterinary dispensing technician may receive an orally transmitted new or refill prescription.
5. A veterinary dispensing technician may refill a prescription only if the initial prescription is issued indicating that a specific number of refills are authorized. A prescription may not be refilled twelve or more months after the issuance date of the initial order.
6. A veterinary dispensing technician must file, or cause to be filed, any prescription, or a copy thereof, which has been dispensed in the veterinary retail facility. The prescription or a copy of the prescription must be preserved for at least three years after it has been filled. The veterinary dispensing technician must furnish a copy of any prescription to the party presenting it on the request of such party only.
7. Records of receipt and dispensing of legend drugs must be kept for three years and may be audited by the state board of pharmacy.
8. All veterinary prescription drugs must be properly labeled when dispensed. A complete label must include the following information:
 - a. Name, address, and telephone number of veterinarian.
 - b. Name of client.

- c. Identification of animals or herds treated.
- d. Date of treatment, prescribing, or dispensing of drug.
- e. Name and quantity of the drug to be prescribed or dispensed.
- f. Dosage and duration directions for use.
- g. Cautionary statements, as needed.
- h. Expiration date.

If that information is included in a manufacturer's label, it is unnecessary to repeat it on the prescription label. If there is inadequate space on the label for complete instructions, the veterinary dispensing technician shall provide additional information to accompany the drug dispensed or prescribed.

- 9. Veterinary prescription drugs must be stored separately from over-the-counter drugs. Drugs must be stored under conditions recommended by the manufacturer.

43-15.4-05. Veterinary dispensing technicians - Educational requirements.

To be eligible to be registered by the board as a veterinary dispensing technician, an individual must meet one of the following requirements:

- 1. Successful completion of an academic program approved by the state board of pharmacy;
- 2. Successful completion of a certification program approved by the state board of pharmacy; or
- 3. Be licensed as a veterinary technician by the state board of veterinary medical examiners.

43-15.4-06. Veterinary dispensing technicians - Registration requirements.

- 1. A veterinary dispensing technician must register with the state board of pharmacy on an annual basis.
- 2. A veterinary dispensing technician must be assigned a registration number.
- 3. The state board of pharmacy shall provide the veterinary dispensing technician with an annual registration card and pocket identification card.
- 4. The veterinary dispensing technician certificate and annual registration card must be displayed and visible to the public in the veterinary retail facility where the veterinary dispensing technician is employed.
- 5. The veterinary dispensing technician must wear a name badge while in the veterinary retail facility which clearly identifies the person as a "veterinary dispensing technician."
- 6. Every registered veterinary dispensing technician, within fifteen days after changing address or place of employment, shall notify the board of the change. The board shall make the necessary changes in the board's records.

7. A veterinary dispensing technician holding a certificate of registration as a veterinary dispensing technician in this state may go on inactive status and continue to hold a certificate of registration in this state provided the technician on inactive status may not practice within this state. A veterinary dispensing technician on inactive status may not be required to meet the continuing education requirements of the board under section 43-15.4-08. In order for a veterinary dispensing technician to change an inactive status of registration to an active status of registration, the veterinary dispensing technician must complete eight hours of approved continuing education and thereafter comply with the continuing education requirements of the board.

43-15.4-07. Veterinary dispensing technician continuing education.

1. Each registered veterinary dispensing technician shall complete at least eight hours of approved continuing education every year as a condition of renewal of a registration as a veterinary dispensing technician in this state. Of the required eight hours of continuing education, at least four hours must be of pharmacy technician continuing education approved by the state board of pharmacy and at least four hours must be of veterinary technician continuing education approved by the state board of veterinary medical examiners.
2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the beginning of each annual reporting period may be used in the current annual reporting period which begins March first of each year and ends the last day of February, or the previous reporting period. However, the units may not be counted as credit in both reporting periods. Failure to obtain the required eight hours of continuing education by the renewal date may result in suspension for a minimum of thirty days or a maximum of the period ending the date the continuing education is completed.
3. Veterinary dispensing technicians shall maintain their own records on forms supplied by the board. The records must be maintained for a two-year period.
4. The requirements of this section do not apply to a veterinary dispensing technician applying for a first renewal of a registration.
5. A veterinary dispensing technician registered with the board may make application to the board for a waiver of compliance with the continuing education requirements and may be granted an exemption by the board.
6. Upon request of the board, proof of compliance must be furnished to the board.

43-15.4-08. Penalties for violation of rule regulating veterinary dispensing technicians.

1. The registration of a veterinary dispensing technician violating drug laws or rules may be revoked by the state board of pharmacy, and the veterinary dispensing technician may be subject to the penalties of section 43-15-42.1.
2. The license of a veterinary retail facility violating drug laws or rules may be revoked by the state board of pharmacy and the veterinary retail facility may be subject to the penalties of section 43-15-42.1.

CHAPTER 312

SENATE BILL NO. 2154

(Senators J. Lee, Hogue, Warner)
(Representatives Hogan, Porter, Weisz)

AN ACT to amend and reenact section 43-17-03 of the North Dakota Century Code, relating to membership of the state board of medical examiners; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. State board of medical examiners - How appointed - Qualifications.

1. The governor shall appoint a state board of medical examiners consisting of ~~twelve~~thirteen members, nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, one of whom is a physician assistant, 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.
2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. ~~A person~~The physician assistant member of the board must:
 - a. Be a practicing physician assistant of integrity and ability.
 - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.

- c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 2. APPLICATION. Under section 1 of this Act, the term of office of the physician assistant appointed August 1, 2011, is a five-year term and is thereafter a four-year term in order to establish a staggered arrangement of board terms in compliance with section 43-17-04.

Approved April 19, 2011

Filed April 19, 2011

CHAPTER 313

HOUSE BILL NO. 1222

(Representative Keiser)
(Senators Berry, Klein)

AN ACT to amend and reenact subsection 3 of section 43-17-18 of the North Dakota Century Code, relating to graduates of international medical schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

3. Graduates of international schools.
 - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
 - b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed ~~three years~~thirty months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed ~~three years~~thirty months of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the ~~second and third year~~last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
 - (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
 - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.

- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
- d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

Approved April 11, 2011
Filed April 11, 2011

CHAPTER 314

SENATE BILL NO. 2243

(Senators Nodland, Laffen)
(Representatives Frantsvog, Gruchalla, Kreun)

AN ACT to create and enact a new subsection to section 43-19.1-29 of the North Dakota Century Code, relating to exemptions to regulation by the state board of registration for professional engineers and land surveyors; and to amend and reenact section 43-19.1-02 and subsection 1 of section 43-19.1-27 of the North Dakota Century Code, relating to regulation of professional engineers and land surveyors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-02. Definitions.

In this chapter unless the context otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. ~~"Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of land within this state."~~"Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Land surveyor" means an individual engaged in the practice of land surveying.
6. "Land surveyor intern" means an individual who complies with the requirements for education, experience, and character and who has passed

an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.

7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer and is able to practice engineering in this state if the person through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large. ~~The practice of engineering does not mean or include the practice of engineering by a person exempt under the provisions of section 43-19.1-29, nor the work ordinarily performed by a person that operates or maintains machinery or equipment. Notwithstanding the foregoing provisions, a person may not be construed to practice engineering unless that person offers engineering services to, or performs such engineering for, the public.~~
8. "Practice of land surveying":
 - a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:
 - (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
 - (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
 - (3) Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;

- (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
- (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
- (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point and establishing or replacing any such monument or reference point; and
- (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.

b. Includes:

- (1) Engaging in land surveying;
- (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;
- (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
- (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

9. "Professional engineer" means an individual who by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been registered and licensed by the state board of registration for professional engineers and land surveyors.

9-10. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.

40-11. "Responsible charge" means direct control and personal supervision of engineering or surveying work.

44-12. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

12. ~~"The practice or offer to practice surveying" includes the engagement of any person in land surveying or the representation by any person by verbal claim, sign, letterhead, card, or in any other manner, that such person is a land surveyor and is able to perform land surveying in this state.~~

SECTION 2. AMENDMENT. Subsection 1 of section 43-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not practice or offer to practice professional engineering or land surveying unless the person is an individual registered to practice under or exempt from the provisions of this chapter. The practice of engineering by a professional engineer which includes service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional land surveyor. The practice of land surveying by a professional land surveyor which includes a service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional engineer.

SECTION 3. A new subsection to section 43-19.1-29 of the North Dakota Century Code is created and enacted as follows:

The performance of work ordinarily performed by a person that operates or maintains machinery or equipment.

Approved April 26, 2011

Filed April 26, 2011

CHAPTER 315

SENATE BILL NO. 2173

(Senators Burckhard, Dotzenrod, Laffen)
(Representative Brabandt)

AN ACT to amend and reenact subsection 3 of section 43-19.1-14 of the North Dakota Century Code, relating to an applicant otherwise qualified for registration as a professional engineer and additional qualifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Is an engineer intern with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character that indicates to the board that the applicant is competent to practice engineering, who has been approved for the fundamentals of engineering examination by the board before July 1, 2004, and who holds a valid engineer intern certificate as of ~~July 1, 2004~~January 1, 2006.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 316

HOUSE BILL NO. 1430

(Representatives Louser, Klemin, Weiler)
(Senators Hogue, J. Lee)

AN ACT to amend and reenact sections 43-23-06.1 and 43-23-12.1 of the North Dakota Century Code, relating to definitions and the duties of real estate brokerage firms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-06.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person ~~who~~that has entered ~~into~~ a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
- 5-6. "Dual agency" means a situation in which a real estate brokerage firm, or ~~the~~the real estate brokerage firm's licensees, owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
 - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
 - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.

6. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- 8-9. "Real estate broker", or "broker", means any person ~~who~~that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
- a. Lists, offers, attempts, or agrees to list real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
 - d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
 - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
 - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
 - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
 - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
- 9-10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.

~~40-11.~~ "Real estate salesperson" means any person ~~whothat~~ for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise ~~thereof~~ of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection ~~56~~ for or on behalf of such licensed real estate broker.

SECTION 2. AMENDMENT. Section 43-23-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-12.1. Real estate brokerage firm - Duties required.

1. A real estate brokerage firm and ~~the~~ the real estate brokerage firm's licensees, ~~that~~ which provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency relationship, which must be established through a written agency agreement, may be a seller ~~agent~~ agency, a buyer ~~agent~~ agency, or a ~~subagent~~ dual agency, an appointed agency, a subagency, or, if another form of agency relationship. If a different relationship, including a nonagency relationship with a customer, between the real estate brokerage firm and the person for ~~whom~~ which the real estate brokerage firm performs the services is intended, ~~including a dual agent,~~ the relationship must be disclosed in writing pursuant to rules adopted by the board.
2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and the real estate brokerage firm's licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.
3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.
4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.

5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty by assisting such clients with multiple offers, even though the interests of such clients are competing, and are not required to disclose the existence of competing offers, except as otherwise set forth under this subsection. The real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection. However, if an individual licensee has a written agency agreement with two or more buyers that desire to make an offer for the purchase or lease of the same real property, that licensee shall disclose to those competing buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee.

6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more sellers or lessors as clients that desire to offer competing real property for sale or lease, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty to such clients by performing such services, even though the interests of such clients are competing. In such event, the real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection.

Approved April 8, 2011
Filed April 11, 2011

CHAPTER 317

SENATE BILL NO. 2187

(Senators Olafson, Fischer, Heckaman)
(Representatives R. Kelsch, Boehning, Wieland)

AN ACT to amend and reenact sections 43-23.3-02, 43-23.3-03, and 43-23.3-04.1 of the North Dakota Century Code, relating to the North Dakota real estate appraiser qualifications and ethics board and appraiser permit approval standards; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-02 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must ~~represent~~ be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property. ~~The appraiser members first appointed to the board must be members in good standing of an organization belonging to the appraisal foundation or have the equivalent of five years of full-time experience as an appraiser in this state. Thereafter, each~~
 - a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.
 - b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, ~~the North Dakota credit union league, and the North Dakota league of savings institutions, the credit union association of the Dakotas, and the North Dakota farm credit system associations.~~ Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.
2. The term of each member is five years, ~~except that of the members first appointed, one shall serve for five years, one shall serve for four years, one shall serve for three years, one shall serve for two years, and one shall serve for one year. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause. The~~

3. ~~Annually the~~ members ~~annually~~ shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

SECTION 2. AMENDMENT. Section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-03. Powers and duties of the board.

1. The board, or ~~it~~the board's designated representative, shall:
 - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; ~~and~~; establish application procedures; and establish standards for approval and disapproval of applications for permits.
 - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
 - c. Approve or disapprove applications for permits, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals holding permits.
 - d. Discipline permittees.
 - e. Hold meetings, hearings, and examinations in places and at times as ~~the~~the board designates and maintain records of board activities.
 - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.
 - g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.
 - h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.
2. The board, or ~~it~~the board's designated representative, may:
 - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
 - b. Contract for services necessary to carry out this chapter.
 - c. Enter ~~into~~ reciprocity agreements with other states.

3. The board, or ~~the board's~~ authorized representative, may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-23.3 or the rules of the board. Board investigative files are exempt records as defined in subsection 5 of section 44-04-17.1, but a copy of the investigative file must be provided to a licensee if a complaint is filed against the licensee by the board.

SECTION 3. AMENDMENT. Section 43-23.3-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.

The board ~~may~~shall 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, and if grounds for denial of the application under section 43-23.3-18 do not exist. 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. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.

SECTION 4. APPLICATION. The change in the term limits for board members provided for under section 1 of this Act applies to board member appointments and reappointments made after July 31, 2011; therefore, the new term limit provisions do not disqualify any board member serving on the effective date of this Act, but may prevent the governor from reappointing a board member after the effective date of this Act.

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

Approved April 27, 2011

Filed April 27, 2011

CHAPTER 318

HOUSE BILL NO. 1304

(Representatives S. Meyer, Weisz, Delmore, Holman)
(Senators Bowman, Erbele)

AN ACT to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to an exemption from massage therapy licensure for energy workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-25-04 of the North Dakota Century Code is created and enacted as follows:

Any individual practicing healing by manipulating the energy field or the flow of energy of the human body by means other than the manipulation of the soft tissues of the human body, provided that the individual's services are not designated or implied to be massage or massage therapy. For purposes of this subsection, a light touch or tap is not a manipulation of the soft tissues of the human body.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 319

SENATE BILL NO. 2146

(Senators J. Lee, Uglem, Heckaman)
(Representatives Devlin, Weisz, Trottier)

AN ACT to amend and reenact section 43-28.1-10 of the North Dakota Century Code, relating to the new dental practice grant program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-28.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-28.1-10. New practices - Grants.

1. A dentist who graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota may submit an application to the state health council for a grant for the purpose of establishing a dental practice in a city in the state which has a population that does not exceed seven thousand five hundred.
2. The state health council may award a maximum of two grants per year and shall establish the criteria for the grant program under subsection 1 which must include:
 - a. A maximum grant award of fifty thousand dollars per applicant;
 - b. A requirement that the community must provide a fifty percent dollar or in-kind match for a grant;
 - c. A requirement that a dentist who receives a grant under this section must use the funds for buildings, equipment, and operating expenses;
 - d. A provision that the grant must be distributed in equal amounts over a five-year period; and
 - e. A requirement that a dentist selected for a grant under this section must commit to practice in the community for a minimum of five years.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 320

SENATE BILL NO. 2088

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

AN ACT to create and enact a new section to chapter 43-29 of the North Dakota Century Code, relating to dispensing of veterinary prescription drugs; and to amend and reenact subdivision o of subsection 1 of section 43-29-14 of the North Dakota Century Code, relating to dispensing of veterinary prescription drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision o of subsection 1 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

- o. The use, prescription, or ~~sale~~dispensing of any veterinary prescription drug, or the prescription or ~~an~~ extra-label use of any over-the-counter drug, in the absence of a valid veterinarian-client-patient relationship, except as provided by section 2 of this Act.

SECTION 2. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary prescription drugs.

1. Except as provided under subsection 2, a veterinary prescription drug must be dispensed, used, or prescribed within the context of a veterinarian-client-patient relationship.
2. Other than a controlled substance, a licensed veterinarian may dispense a veterinary prescription drug without establishing a veterinarian-client-patient relationship if:
 - a. The drug is prescribed by a licensed veterinarian or by a veterinarian licensed in another jurisdiction who has established a veterinarian-client-patient relationship;
 - b. The prescribing veterinarian has an inadequate supply of the drug, failure to dispense the drug would interrupt a therapeutic regimen, or failure to dispense the drug would cause an animal to suffer; and
 - c. The dispensing veterinarian verifies the prescription with the prescribing veterinarian.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 321

SENATE BILL NO. 2341

(Senators Erbele, Olafson, Taylor)
(Representatives Boe, D. Johnson, J. Nelson)

AN ACT to amend and reenact sections 43-29.1-01, 43-29.1-02, 43-29.1-03, 43-29.1-07, and 43-29.1-08 of the North Dakota Century Code, relating to the veterinarian loan repayment program; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-29.1-01. Loan repayment program - Veterinarians - Maximum amount of funds.

Each year the state health council, in consultation with the state board of animal health, shall select ~~from a pool of qualified applicants no more than three veterinarians who shall~~ participate in a loan repayment program, as provided for in this chapter. Each applicant must be a veterinarian and must agree to provide food animal veterinary medicine services to communities in this state. The veterinarians selected applicants are eligible to receive up to eighty thousand dollars in loan repayment funds. If the state health council accepts any gifts, grants, or donations under this chapter, The number of applicants that the council may select additional veterinarians for participation in the loan repayment program under is limited only by the moneys available to support the program, as provided for in this chapter.

SECTION 2. AMENDMENT. Section 43-29.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-29.1-02. Loan repayment program - Veterinarians - Powers of state health council.

The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.;
2. Identify communities that are in need of a veterinarian and establish a priority ranking for participation in the program by the selected communities.;
3. Create and distribute a loan repayment application.;
4. Determine the amount of the loan repayment funds for which ~~a veterinarian is an applicant may be~~ eligible under this chapter and, in making this determination, examine any outstanding education loans incurred by the applicant.;
5. Establish conditions regarding the use of the loan repayment funds.;

6. Enter a nonrenewable contract with the ~~veterinarian~~selected applicant and the selected community to provide to the ~~veterinarian~~applicant funds for the repayment of education loans in exchange for the ~~veterinarian~~applicant agreeing to actively practice in the selected community-;
7. Receive and use funds appropriated for the program-;
8. Enforce any contract under the program-;
9. Cancel a contract for reasonable cause-;
10. Participate in federal programs that support the repayment of education loans incurred by veterinarians and agree to the conditions of the federal programs-;
11. Accept property from an entity-; and
12. Cooperate with the state department of health to effectuate this chapter.

SECTION 3. AMENDMENT. Section 43-29.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-29.1-03. Veterinarian selection criteria - Eligibility for loan repayment.

1. In establishing the criteria regarding a ~~veterinarian's~~ eligibility for loan repayment funds under this chapter, the state health council shall consider the applicant's:
 - a. ~~Consider the veterinarian's training~~Training in food animal veterinary medicine, ability ~~and,~~ willingness ~~of the veterinarian~~ to engage in food animal veterinary medicine, and the extent to which such services are needed in a selected community-;
 - b. ~~Consider the veterinarian's commitment~~Commitment to serve in a community that is in need of a veterinarian-;
 - c. ~~Consider the compatibility of the veterinarian~~Compatibility with a selected community-;
 - d. ~~Consider the date by which the veterinarian would be available~~Date of availability for service to the selected community-; and
 - e. ~~Consider the veterinarian's competence~~Competence and professional conduct.
 - f. ~~Give priority to a veterinarian on whose behalf state-funded student support fees have not been paid.~~
2. ~~A veterinarian who is~~An applicant selected to receive loan repayment funds under this chapter must:
 - a. ~~Must have~~Have graduated from an accredited college of veterinary medicine; and
 - b. ~~Must be~~Be licensed to practice veterinary medicine in this state.

3. ~~Veterinarians~~ A selected applicant shall contract to provide full-time veterinary medicine services for two, three, or four years in one or more selected communities.

SECTION 4. AMENDMENT. Section 43-29.1-07 of the North Dakota Century Code is amended and reenacted as follows:

43-29.1-07. Loan repayment.

1.
 - a. Upon completing six months of the first year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars.
 - b. Upon completing a second year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars.
 - c. Upon completing a third year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to twenty-five thousand dollars.
 - d. Upon completing a fourth year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to twenty-five thousand dollars.
2. All payments under this section must be made on the veterinarian's behalf to the issuer of the student loan. ~~No individual may~~
3. A veterinarian is not entitled to receive more than eighty thousand dollars under this section.
4. If an individual fails to complete an entire year of service, the amount repayable under this section for that year must be prorated.
5. If any moneys remain in the state veterinary loan repayment account after the health council has met all statutory and contractual obligations established under this chapter, the health council may use the moneys to increase the number of veterinarians participating in the loan repayment program.

SECTION 5. AMENDMENT. Section 43-29.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-29.1-08. Gifts, grants, and donations - Continuing appropriation.

1. The state health council may accept any conditional or unconditional gifts, grants, ~~or~~ and donations for the purpose of providing ~~funds~~ moneys for the repayment of veterinarians' education loans. ~~However, if an entity desires to provide funds~~ moneys to the state health council ~~to allow an expansion of the program beyond the three veterinarians contemplated by this chapter for the location of a veterinarian in or at a specific site, the entity shall commit to fund fully the expansion~~ provide the full amount required under this program for a period of four years.
2. The state health council may contract with a public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of this chapter. ~~During the 2007-09 biennium, the state department~~

~~of health may receive no more than seven percent of the appropriated moneys and the state veterinarian may receive no more than three percent of the appropriated moneys for administration of the loan repayment program.~~

3. All moneys received as gifts, grants, or donations under this section are appropriated ~~as~~ on a continuing ~~appropriation~~ basis to the state health council for the purpose of ~~providing funds for the repayment of additional veterinarians' education loans~~ increasing the number of veterinarians participating in the loan repayment program under this chapter.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 322

HOUSE BILL NO. 1433

(Representatives S. Meyer, Devlin, Koppelman, Kilichowski)
(Senators Lyson, Nodland)

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to regulation of investigative and security services; and to amend and reenact section 12-63-11 of the North Dakota Century Code, relating to licensure of peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-11 of the North Dakota Century Code is amended and reenacted as follows:

12-63-11. Renewal of license.

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer or is no longer employed by a criminal justice agency. A licensee may retain inactive status indefinitely if the licensee maintains continuing education requirements and renews the license in accordance with board requirements. A licensee on inactive status shall meet the same qualifications, testing, and insurance requirements as are required by law and rule for a licensee on active status.

SECTION 2. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Peace officers.

Notwithstanding section 12.1-13-04, the board may issue a license to an individual who is a peace officer if the license issued to that peace officer under chapter 12-63 is on inactive status.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 323

SENATE BILL NO. 2164

(Senators Lyson, Sitte, Krebsbach)
(Representatives Grande, Porter, Schatz)

AN ACT to amend and reenact sections 43-31-02, 43-31-07, and 43-31-16 of the North Dakota Century Code, relating to requirements for detection of deception instruments and examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-31-02 of the North Dakota Century Code is amended and reenacted as follows:

43-31-02. ~~Device or instrument~~Instruments to be used.

Every examiner shall use an instrument which records ~~permanently and simultaneously the subject's cardiovascular and respiratory patterns as minimum standards~~physiologic activity with four sensors: a blood pressure cuff, electrodermal sensors, and two respirator sensors, but such an instrument may record additional physiological changes pertinent to the detection of deception. An examiner shall, ~~upon written request of a~~when requested by the person being examined, ~~make known~~provide the results of such test to the person examined ~~examination~~ within five ~~days of receipt of the written request~~a reasonable amount of time.

SECTION 2. AMENDMENT. Section 43-31-07 of the North Dakota Century Code is amended and reenacted as follows:

43-31-07. Qualifications of applicant.

A person is qualified to receive a license as an examiner:

1. Who is at least ~~eighteen~~twenty-one years of age.
2. Who establishes that the person is a person of honesty, truthfulness, integrity, and moral fitness.
3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is determined, pursuant to section 12.1-33-02.1, to be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.
4. Who has passed ~~an examination a test~~ conducted by the attorney general, or under the attorney general's supervision, to determine the applicant's competency to obtain a license to practice as an examiner ~~except that an examiner who was continually engaged in the administration of examinations for the two-year period immediately prior to July 1, 1975, or who had successfully completed a training course prior to July 1, 1975, from a school deemed acceptable by the attorney general, and who was previously exempt~~

~~from the provisions of this chapter as an examiner in the exclusive employ of the state of North Dakota, a county, municipality, or political subdivision thereof as then provided by section 43-31-15 is exempt from the requirement of an examination.~~

5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

SECTION 3. AMENDMENT. Section 43-31-16 of the North Dakota Century Code is amended and reenacted as follows:

43-31-16. ~~Examiner licensed in another state exempt from examination~~Exemption from testing requirements.

~~An applicant who is an examiner, licensed under the laws of another state of the United States, may be issued a license without examination being tested by the attorney general, in the attorney general's discretion, upon payment of a fee of thirty five dollars, and the production of satisfactory proof if:~~

1. ~~That the~~The applicant is at least twenty-one years of age;
2. ~~That the~~The applicant is a citizen of the United States;
3. ~~That the~~The applicant is of good moral character; and
4. ~~That the requirements for the licensing of examiners in such particular state of the United States were at the date of licensing substantially equivalent to the requirements then in force in this state; and~~
5. ~~That the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state for at least two years prior to the application for license hereunder.~~The applicant:
 - a. Is licensed in a state that has substantially equivalent licensing requirements and grants reciprocity to examiners licensed in North Dakota; or
 - b. Is a North Dakota resident and has within the previous twelve months successfully completed a basic polygraph examiners course taught by an accredited school and approved by the attorney general.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 324

SENATE BILL NO. 2155

(Senator J. Lee)

AN ACT to create and enact two new sections to chapter 43-32 of the North Dakota Century Code, relating to regulation of applied behavior analysts; and to amend and reenact sections 43-32-01, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30 of the North Dakota Century Code, relating to the regulation of applied behavior analysis by the state board of psychologist examiners.

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. "Applied behavior analyst" means an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst.
2. "Autism spectrum disorder" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.
3. "Board" means the North Dakota state board of psychologist examiners.
- ~~2.4.~~ "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
- ~~3.5.~~ "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.
- ~~4.6.~~ "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.
- ~~5.7.~~ "Licensee" means an industrial-organizational psychologist, an applied behavior analyst, or a psychologist.
- ~~6.8.~~ "Practice of applied behavior analysis":

- a. Means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including principles of operant and respondent learning. The term includes applications of those principles, methods, and procedures to:
- (1) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;
 - (2) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals;
 - (3) Design, supervise, evaluate, and modify treatment programs to change the behavior of groups; and
 - (4) Consult with individuals and organizations.
- b. The term does not include diagnosis, counseling, psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, family therapy, coordination of care, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

9. "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, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, 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, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

7-10. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

8-11. "Psychology resident" means an individual who has met the requirement of subdivision b of subsection 1 of section 43-32-20, is involved in supervised psychological employment, and has registered with the board.

9-12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst and is supervised by a licensed psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

13. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology or, psychology, or applied behavior analysis, as appropriate.

SECTION 2. AMENDMENT. Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08. Rules.

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. 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 applied behavior analysts and for registering registered applied behavior analysts; 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 3. 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 licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant 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 4. 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 or registration issued under this chapter without proof the continuing education requirements under section 43-32-08.1 have been met. An individual whose license or registration is not renewed because of failure to meet the continuing education requirements must be reinstated and the license or registration renewed if, within one year from the date of nonrenewal, the individual demonstrates to the secretary of the board the continuing education requirements have been satisfied, pays the renewal fee, and pays a late fee to be determined by rule of the board.

SECTION 5. AMENDMENT. Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

43-32-09. Examination of qualifications of applicants.

The board shall examine for, deny, approve, revoke, suspend, and renew the licensing and registration of applicants as provided under this chapter.

SECTION 6. AMENDMENT. Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and license fee for licensure and registration.

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. 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 7. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and registration fee.

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license~~ fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license renewal~~. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual ~~license~~ fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

SECTION 8. 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~~ annual fee - Reinstatement.

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license~~ fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the 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 9. AMENDMENT. Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
 - a. The name, age, and residence of each applicant.
 - b. The date of each applicant's application.
 - c. The place of business of each applicant.
 - d. A summary of the educational and other qualifications of each applicant.
 - e. Whether an examination was required of an applicant.
 - f. Whether a license or registration was granted to an applicant.
 - g. The date of the action of the board.

- h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.

SECTION 10. AMENDMENT. Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19.1. Licensing applicant licensed in other jurisdictions.

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology ~~and~~, industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:
 4. a. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
 2. b. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.
2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:
 - a. Licensed or registered and is in good standing in another jurisdiction; or
 - b. Certified in good standing with the national behavior analyst certification board.

SECTION 11. 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. A student or intern pursuing a course of study in psychology ~~or~~, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist ~~or~~, industrial-organizational psychologist, or applied behavior analyst. The student or intern ~~shall~~may not use the title "psychologist" ~~or~~, "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status ~~shall~~must be clearly stated.
2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology ~~or~~, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.
3. 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, applied behavior analysis, or

industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.

4. An individual employed by a public school 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 if the 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.
5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.
6. 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.
7. A person employed by an agency, a nonprofit corporation, or an institution 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.
8. An individual providing applied behavior analysis services to an individual in a public school setting.
9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.
10. An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst.
11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-30 within the body of knowledge and scope of professional practice of occupational therapy.

SECTION 12. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Applied behavior analysis - Licensure or registration required - Titles.

Unless a registrant, an applied behavior analyst, or a psychologist, a person may not:

1. Engage in the practice of applied behavior analysis or render services designated as applied behavior analysis or hold out as a practitioner of applied behavior analysis in this state; or
2. Use the title "licensed applied behavior analyst" or "registered applied behavior analyst" or any title that is substantially the same unless licensed or registered by the board under this chapter.

SECTION 13. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Applied behavior analysis - Renewal - Fees.

1. The board shall issue a license or registration to each applicant who files an application for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst upon a form and in a manner the board prescribes; submits the required fee established by the board; and demonstrates the applicant meets the requirements of subsection 2.
2. An applicant under this section shall demonstrate the applicant:
 - a. Has met board-approved education requirements, such as the education requirements of the board-certified behavior analyst standards;
 - b. Has passed a board-approved demonstration of professional competence, such as a standardized examination specific to the profession such as the board-certified behavior analyst examination;
 - c. Is credentialed as a behavior analyst by a board-approved credentialing entity, such as the behavior analyst certification board; and
 - d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst.
3. The board may withhold, deny, revoke, or suspend a license or registration for applied behavior analyst applied for or issued under this chapter and otherwise may discipline a license or registration holder or applicant in the same manner provided under section 43-32-27.
4. A complaint regarding or board investigation of a licensed or registered applied behavior analyst is filed or conducted in the same manner as provided under section 43-32-27.1.
5. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:

- a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.
- b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.
- c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 325

SENATE BILL NO. 2101

(Natural Resources Committee)

(At the request of the State Board of Water Well Contractors)

AN ACT to amend and reenact subsection 5 of section 43-35-13 and section 43-35-17 of the North Dakota Century Code, relating to fees to obtain and renew a water well contractor certificate; and to repeal sections 43-35-15, 43-35-15.1, 43-35-15.2, and 43-35-15.3 of the North Dakota Century Code, relating to water well monitoring certification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-35-13 of the North Dakota Century Code is amended and reenacted as follows:

5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ~~ten~~ one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

SECTION 2. AMENDMENT. Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

43-35-17. Renewal of certificate - Continuing education.

A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made before April first in the year following the certificate's expiration, must be accompanied by a fee in an amount set by the board not to exceed ~~fifty~~ two hundred dollars, and must be accompanied by a bond as provided in section 43-35-14.

SECTION 3. REPEAL. Sections 43-35-15, 43-35-15.1, 43-35-15.2, and 43-35-15.3 of the North Dakota Century Code are repealed.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 326

SENATE BILL NO. 2115

(Human Services Committee)
(At the request of the Board of Examiners on Audiology
and Speech-Language Pathology)

AN ACT to amend and reenact subsection 7 of section 43-37-02, sections 43-37-03, 43-37-04, 43-37-05, 43-37-06, 43-37-08, and 43-37-09, and subsection 1 of section 43-37-13 of the North Dakota Century Code, relating to the practice, licensing, and disciplining of audiologists and speech-language pathologists and the composition, powers, and compensation of the board of examiners on audiology and speech-language pathology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 43-37-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, evaluation, identification, prediction, counseling, or instruction related to the development and disorders of speech and language, including voice, rhythm, and articulation, ~~cognitive-communication, swallowing, and augmentative alternative communication~~ for the purpose of identifying, evaluating, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.

SECTION 2. AMENDMENT. Section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

43-37-03. License required - Exceptions.

A person may not practice or represent that the person is an audiologist or speech-language pathologist in this state unless licensed annually in accordance with this chapter. However, this chapter does not prevent or restrict:

1. A physician or surgeon from engaging in the practice of medicine in this state.
2. A hearing aid specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.
3. Any person licensed in this state by any other law from engaging in the profession or occupation for which licensed.
4. A person who holds a valid credential as a speech-language pathologist or teacher of the hearing-impaired, issued by the department of public instruction, or a person employed as an audiologist or speech-language pathologist by the government of the United States, if such person performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the governmental or state educational organization by

which employed. However, such person may, without obtaining a license under this chapter, consult with or disseminate that person's research findings and other scientific information to speech-language pathologists or audiologists outside the jurisdiction of the organization by which that person is employed.

5. The activities and services of a person pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if such activities and services constitute a part of a supervised course of study and such person is designated audiology or speech-language pathology intern, audiology or speech-language pathology trainee, or by any other such titles clearly indicating the training status appropriate to the level of training.
6. The activities and services of persons fulfilling the requirements of subsection 3 of section 43-37-04.
7. The performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed under this chapter if such services are performed for no more than five days in any calendar year and in cooperation with an audiologist or speech-language pathologist licensed under this chapter.
8. Any person holding a valid credential as a teacher of the hearing-impaired issued by the council on education of the deaf from engaging in the practice of habilitation and rehabilitation of hearing-impaired persons.
- ~~9. No speech pathologist or audiologist licensed pursuant to this chapter may receive any remuneration of any kind from the sale of any type of hearing aid unless the speech pathologist or audiologist is licensed as provided in chapter 43-33.~~
- ~~10.~~ Any person possessing a valid certificate as a certified audiometric technician recognized by the state board as meeting council for accreditation in occupational hearing conservation standards appendix II or its equivalent from providing audiometric testing if such service is performed in cooperation with either an audiologist licensed under this chapter or a licensed physician.
- ~~11.~~ Any person providing hearing screening services as part of a public service project solely intended for the purposes of identification of hearing impairment if such services are performed in cooperation with an audiologist licensed under this chapter who is directly responsible for:
 - a. The training of said person;
 - b. The administration of hearing screening procedures;
 - c. The interpretation of testing results; and
 - d. Assuring appropriate referral and followup of the identified population.

SECTION 3. AMENDMENT. Section 43-37-04 of the North Dakota Century Code is amended and reenacted as follows:

43-37-04. Eligibility for licensure.

To be eligible for licensure by the board as an audiologist or speech-language pathologist, ~~a person~~ an applicant shall meet all the following requirements:

1. Be of good moral character.
2. Possess ~~at least a master's~~ an appropriate degree ~~or its equivalent in the area of speech-language pathology or audiology~~ from an educational institution recognized by the board.
 - a. An applicant for a speech-language pathologist license shall possess at least a master's degree in speech-language pathology.
 - b. An applicant for an audiologist license shall possess at least a master's or a doctorate degree in audiology.
3. Submit evidence showing qualifications prescribed by rules of the board.
4. Pass an examination approved by the board ~~and pay the prescribed fee~~ within one year of application. The board may waive the examination requirement if the applicant presents proof of licensure in another state which has professional standards equivalent to those required by the board.
5. Pay the prescribed fee.

SECTION 4. AMENDMENT. Section 43-37-05 of the North Dakota Century Code is amended and reenacted as follows:

43-37-05. Board of examiners on audiology and speech-language pathology.

1. The board of examiners on audiology and speech-language pathology is hereby established.
2. The board must be composed of ~~seven~~ eight members appointed by the governor. Appointees must be residents of this state for at least one year immediately preceding their appointment and, except for the consumer member, must be engaged in rendering services to the public, in teaching, or in research in audiology or speech-language pathology for at least three years preceding their appointment. Two board members must be audiologists, ~~two~~ three must be speech-language pathologists, one must be an otolaryngologist, one must be a hearing aid specialist, and one must be a consumer.
3. Each board member shall hold office for three years and until a successor is appointed and qualified. The terms must be arranged so that no more than ~~three~~ four terms expire on July first of each year. The governor shall fill vacancies for an unexpired term. No person may serve more than two successive terms.
4. The board shall meet at least twice each calendar year. Special meetings may be convened at the call of the chairman or at the written request of any three board members.

5. ~~Four~~^{Five} members of the board constitute a quorum. When an application for licensure is received, one member of the quorum must be engaged in the profession for which a license is sought.

SECTION 5. AMENDMENT. Section 43-37-06 of the North Dakota Century Code is amended and reenacted as follows:

43-37-06. Powers and duties of the board.

The board, ~~pursuant to chapter 28-32,~~ may employ persons to assist the board in carrying out its duties under this chapter and adopt rules for:

1. Licensing.
2. Licensing fees not to exceed one hundred dollars per year.
3. Ethical standards of conduct.
4. Continuing competency and education.
5. ~~Grievances.~~
6. License suspension or revocation.
7. ~~Employee duties and conduct.~~
8. ~~Recordkeeping and fiscal control.~~
- 9-6. Carrying out the purposes of this chapter.

SECTION 6. AMENDMENT. Section 43-37-08 of the North Dakota Century Code is amended and reenacted as follows:

43-37-08. Compensation of board members.

Board members shall receive ~~no salary for their services, but~~compensation per day in the amount provided for members of the legislative management under section 54-35-10 and shall receive be reimbursed for mileage and travel expenses ~~for attendance at board meetings necessarily incurred in the conduct of board business at the same rate as state employees.~~

SECTION 7. AMENDMENT. Section 43-37-09 of the North Dakota Century Code is amended and reenacted as follows:

43-37-09. License examination.

1. A separate examination must be required for licensure in speech-language pathology or audiology. Any person may be licensed in both areas if that person meets the respective qualifications of each area.
2. The speech-language pathology examination and the audiology examination are ~~the national examinations as established offered by the American speech-language-hearing association organizations approved by the board.~~ The board shall maintain proof that all licensees have passed the required examination. The examination is not required for renewal of licenses except as required by board rules.

- ~~3. The board may issue a temporary license to practice activities regulated by this chapter to any person who furnishes satisfactory evidence of qualifications to the board. A temporary license may be issued for no longer than one year.~~

SECTION 8. AMENDMENT. Subsection 1 of section 43-37-13 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may refuse to issue or renew a license, or may suspend or revoke, or take other disciplinary action against a license if the licensee or applicant for license has engaged in unprofessional conduct. Such unprofessional conduct may include:
 - a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
 - b. Engaging in unprofessional conduct, as defined by the rules established by the board, or violating the code of ethics adopted and published by the board;
 - c. Conviction of an offense if the acts for which that person is convicted are determined by the board to have a direct bearing on such applicant's or licensee's ability to serve the public in the capacity of a speech-language pathologist or audiologist; or the board determines that such applicant or licensee, following conviction of any other offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
 - d. Violation of any order or rule adopted by the board;
 - e. Violation of this chapter.
 - f. Receiving remuneration of any kind from the sale of any type of hearing aid, unless licensed under chapter 43-33.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 327

SENATE BILL NO. 2199

(Senators G. Lee, Berry, Fischer)
(Representatives Grande, Hawken, Streyle)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-42 of the North Dakota Century Code, relating to criminal history record checks for individuals licensed by the state board of respiratory care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁸ **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The state board of respiratory care for applicants, licensees, or investigations under chapter 43-42, except that criminal history record checks need not be made unless required by the board.

SECTION 2. A new section to chapter 43-42 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks.

The board may require any applicant or licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee.

Approved April 25, 2011
Filed April 25, 2011

¹¹⁸ Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2114, chapter 512.

CHAPTER 328

SENATE BILL NO. 2097

(Human Services Committee)

(At the request of the Board of Counselor Examiners)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-47 of the North Dakota Century Code, relating to criminal history record checks of counselors; and to amend and reenact subsection 3 of section 43-47-03 of the North Dakota Century Code, relating to fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

119 **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The board of counselor examiners for applicants for licensure or licensees under chapter 43-47, except that criminal history record checks for licensees need not be made unless required by the board.

SECTION 2. AMENDMENT. Subsection 3 of section 43-47-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Set, by rule, and collect a fee, ~~not to exceed one hundred fifty dollars,~~ for the filing of each application for a license under this chapter and set, by rule, and collect a fee, ~~not to exceed one hundred dollars,~~ for the renewal of a license under this chapter.

SECTION 3. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks.

The board shall require an applicant for licensure under subsections 2, 3, and 4 of section 43-47-06 and section 43-47-06.1 to submit to a statewide and nationwide criminal history record check and may require a licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

Approved April 25, 2011

Filed April 25, 2011

¹¹⁹ Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2114, chapter 512, and section 1 of Senate Bill No. 2199, chapter 327.

CHAPTER 329

HOUSE BILL NO. 1376

(Representatives Monson, Damschen)
(Senator Olafson)

AN ACT to amend and reenact sections 43-49-07, 43-49-09, and 43-49-11 of the North Dakota Century Code, relating to licensure of reflexologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-49-07 of the North Dakota Century Code is amended and reenacted as follows:

43-49-07. Reciprocity Qualification for licensure by an applicant licensed in another jurisdiction.

Notwithstanding the requirements in section 43-49-06 for the issuance of a license, the board shall license an individual ~~from who applies for licensure to work in this state if the applicant is licensed as a reflexologist by another state who~~, applies for licensure, pays the applicable fee, meets or exceeds the requirements for licensure set by the board, and who has no imposed or pending disciplinary actions.

SECTION 2. AMENDMENT. Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

43-49-09. License - Display - Renewal - Renewal fee.

Each license must be conspicuously displayed at the place of practice. A license must be recorded within thirty days after issuance in the office of the recorder, unless the board of county commissioners designates a different official, in any county where the reflexologist practices.

A license must be renewed before June first of each year. The secretary-treasurer of the board shall mail notice of renewal to each licensed reflexologist's address as shown in the records of the board at least thirty days before the expiration of the license. The notice must include any requests for information necessary for renewal. The licensed reflexologist may renew a license by sending a renewal fee of ~~twenty five dollars, or an~~ amount set by the board, not to exceed one hundred dollars, to the secretary-treasurer of the board, and submitting proof that the reflexologist has attended a seminar on reflexology at least once during the preceding three years. A license that is not renewed by June thirtieth lapses.

SECTION 3. AMENDMENT. Section 43-49-11 of the North Dakota Century Code is amended and reenacted as follows:

43-49-11. Prohibited practices.

~~A reflexologist may not use lotions, creams, or mechanical devices in the application of reflexology.~~ A reflexologist may not diagnose or treat for specific diseases, practice spinal or other joint manipulations, or prescribe or adjust prescription medication, and ~~prescribe or administer~~ vitamins.

Approved April 8, 2011

Filed April 11, 2011

CHAPTER 330

SENATE BILL NO. 2185

(Senators Oehlke, Burckhard, Robinson)
(Representatives Mock, Hofstad)

AN ACT to create a new section to chapter 43-52 of the North Dakota Century Code, relating to the regulation of sign language interpreters; to amend and reenact sections 43-52-01, 43-52-02, and 43-52-03 of the North Dakota Century Code, relating to regulation of sign language interpreters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-52-01 of the North Dakota Century Code is amended and reenacted as follows:

43-52-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Consumer" means an individual who is deaf, deaf-blind, speech-impaired, hard-of-hearing, or who requires special communication techniques in order to communicate.
2. "Interpreter" means an individual who engages in the practice of interpreting.
3. "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include American sign language, English-based sign language, and oral interpreting.
4. "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include the registry of interpreters for the deaf and the national association of the deaf.
5. "Video remote interpreting" is a process that allows an individual who is deaf or hard-of-hearing to communicate with a hearing individual at the same location through an interpreter displayed via videoconferencing equipment or through a television with a videophone.

SECTION 2. AMENDMENT. Section 43-52-02 of the North Dakota Century Code is amended and reenacted as follows:

43-52-02. Practice of interpreting.

An individual may not practice or represent as an interpreter for deaf, deaf-blind, speech-impaired, or hard-of-hearing individuals in the state unless the individual holds a valid nationally recognized certification. ~~However, an individual who was practicing as an interpreter in this state before August 1, 2001, has until July 31, 2003, to meet the certification requirement under this section.~~ A person may not

provide video remote interpreting services in this state unless the person is an individual who holds a valid nationally recognized certification.

SECTION 3. AMENDMENT. Section 43-52-03 of the North Dakota Century Code is amended and reenacted as follows:

43-52-03. Exceptions.

This chapter does not prevent or restrict:

1. A nonresident interpreter working in this state not more than nineteen days per year.
2. An interpreter working at a religious activity.
3. An interpreter working as a volunteer without compensation.
4. An interpreter working in an emergency. An emergency is a situation in which the consumer decides that the length of time needed to obtain a ~~licensed~~certified interpreter is likely to cause injury or loss to the consumer.
5. The activities and services of an interpreter intern or student-in-training enrolled in a program of study in interpreting at an accredited institution of higher learning; interpreting under the supervision of a ~~licensed~~certified interpreter as part of a supervised program; and identified as an interpreter intern or student-in-training.
6. An individual using sign language or a manual communication system as a means of communication with or on behalf of a family member, a deaf individual, a deaf-blind individual, a speech-impaired individual, or hard-of-hearing individual who has specifically requested that use by that individual.
7. A communication made as a reasonable accommodation for the employment of a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual.
8. A communication with a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual who could not communicate using American sign language or English-based sign language.
9. An individual working in an elementary or secondary school who has ~~successfully completed a three-year educational interpreter certificate program of study or who has passed the educational interpreter performance assessment at a level of 3.5 or higher. The individual may work in the school setting without national certification until August 1, 2005, if the individual is being mentored by a trained mentor who is either a certified interpreter or a deaf adult. To continue working in the school setting after August 1, 2005, the individual must have obtained national certification.~~
10. An individual who has successfully completed an accredited interpreter training program from interpreting without certification for a period of up to two years from the date of completion of the program if, during that period, the individual is mentored by a trained mentor who is either a certified interpreter or a deaf adult.

SECTION 4. A new section to chapter 43-52 of the North Dakota Century Code is created and enacted as follows:

Penalty - Civil penalty.

Any person who violates this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin a violation of this chapter without proof of actual damages sustained by any person.

Approved April 26, 2011

Filed April 26, 2011

CHAPTER 331

SENATE BILL NO. 2271

(Senators Sitte, Christmann, Mathern)
(Representatives Hofstad, R. Kelsch, J. Kelsh)

AN ACT to create and enact a new subsection to section 43-17-02 and chapters 43-57, 43-58, and 43-59 of the North Dakota Century Code, relating to creation of the state board of integrative health, regulation of naturopaths, and regulation of music therapists; to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to duties of naturopaths; to provide a penalty; to provide an appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

SECTION 2. AMENDMENT. Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

43-17-41. Duty of physicians and others to report injury - Penalty.

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
 - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
 - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.

4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

SECTION 3. Chapter 43-57 of the North Dakota Century Code is created and enacted as follows:

43-57-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care.
2. "Licensee" means an individual licensed by the board under this chapter and under chapter 43-58 or 43-59.

43-57-02. Board - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the state board of integrative health care, which must consist of at least five members. Each profession regulated by the board must have one member on the board representing that profession. In addition, one member must be a doctor of medicine or osteopathy, one member must be a pharmacist, one member must be an advanced practice registered nurse, and at least one but no more than two members must be laypersons. If a doctor of medicine or osteopathy is not willing and able to serve, the governor may appoint an advanced practice registered nurse to fill this position. A board member must be a resident of this state. The professional members must be licensed to practice in this state, except the initial appointment for a newly regulated profession, who must be eligible for licensure. The layperson must be at least twenty-one years of age and may not be affiliated with any organization or profession that represents, provides, or regulates health care.
2. The term of office of each board member is three years with appointments distributed evenly from year to year. A member may not serve more than two consecutive full terms.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.
4. Each board member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.
5. Annually, board members shall elect a chairman to preside at meetings of the board and a vice chairman to preside at meetings of the board in the chairman's absence.

43-57-03. Powers and duties of board.

1. The board shall adopt rules:
 - a. To administer and enforce this chapter and chapters 43-58 and 43-59;
 - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
 - c. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
 - d. That establish educational standards for each profession regulated by the board as appropriate; and
 - e. That set fees for licensure, which may include:
 - (1) Application fee;
 - (2) License fee;
 - (3) Renewal fee;
 - (4) Late fee;
 - (5) Administrative fees; and
 - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
3. The board may employ staff and provide for staff compensation.
4. The board shall receive all moneys collected under this chapter, chapter 43-58, and chapter 43-59 and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
5. The board may establish continuing education requirements for license renewal.
6. The board may adopt a code of ethics for each profession regulated by the board.

43-57-04. Board duties in regulating professions - Subgroups.

1. The board shall establish a subgroup for each profession regulated by the board. The board shall appoint at least three and no more than five members of the profession to serve as volunteer members of the subgroup. A subgroup member must be a licensed member of the profession, except in the case of a newly regulated profession in which case each subgroup member must be eligible for licensure. The board may appoint a board member to serve on a subgroup representing that board member's profession. The subgroup members serve at the pleasure of the board.

2. A subgroup established under this section shall serve in an advisory capacity to advise the board when requested by the board. The subgroup on its own motion may advise the board as the subgroup determines necessary.
3. The board may not take any action that impacts a profession regulated by the board as a whole or which impacts one or more licensees of that profession unless the board first consults with and requests the recommendation of the appropriate subgroup. If the board takes an action that is contrary to a subgroup's recommendation, the board shall articulate in writing why the subgroup's recommendation was not followed.

43-57-05. Petition to the board - Inclusion as a board-regulated profession - Consideration of additional health care professions.

1. An existing occupational or professional board of this state or agency of this state which regulates the practice of a health profession or a representative of a health profession that is not regulated by this state may submit to the board a petition and proposed bill draft requesting inclusion of that health profession as a profession regulated by the board. Upon receipt of a petition and proposed bill draft submitted under this section, the board shall review the petition and may work with the person submitting the petition to provide assistance in accomplishing this requested inclusion.
2. If a committee of the legislative assembly considers a measure to regulate a health care profession with fewer than fifty likely members, the committee shall consider whether it is desirable and feasible to have the state board of integrative health, some other existing board, or an existing state agency regulate that profession rather than create a new board.
3. If the membership of a board-regulated profession increases to at least one hundred licensees, the board may introduce legislation creating an independent board to regulate that profession.

43-57-06. Issuance of license.

If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58 or 43-59, the board shall issue a license to the applicant.

43-57-07. License renewal - Continuing education.

1. A license is effective when granted by the board.
2. A license expires on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of any continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the individual may not practice until a new application is made and a license is granted by the board.
5. At the time of renewal, the board shall require each applicant to present satisfactory evidence that the applicant has completed any continuing education requirements specified by the board.

6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of any continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

43-57-08. Discipline.

1. The board may take disciplinary action against a licensee by any of the following means:
 - a. Revocation of license;
 - b. Suspension of license;
 - c. Probation;
 - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
 - e. Letter of censure;
 - f. Require the licensee to provide free public or charitable service for a defined period; and
 - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the board must be deposited in the state general fund.
2. Disciplinary action may be imposed against a licensee upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
 - b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 - d. Habitual use of alcohol or drugs.
 - e. Physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
 - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 - g. Obtaining any fee by fraud, deceit, or misrepresentation.

- h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired person.
- i. The violation of any provision of the rules of the board, or any action, stipulation, condition, or agreement imposed by the board.
- j. The practice of the profession under a false or assumed name.
- k. The advertising for the practice of the profession in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
- n. Gross negligence in the practice of the profession.
- o. Sexual abuse, misconduct, or exploitation related to the licensee's practice of the profession.
- p. A continued pattern of inappropriate care.
- q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

43-57-09. 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 this chapter, 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 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 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 licensee'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.

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 may be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
6. The board may at any time enter an informal resolution to resolve the complaint or disciplinary action.
7. An appeal from the board's final decision may be taken in accordance with chapter 28-32.

43-57-10. Disciplinary proceedings - Cost of prosecution.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board. A licensee may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the administrative law judge is final. The administrative hearing must occur before the licensee's license may be suspended for nonpayment.

43-57-11. Enforcement - Penalty.

A person that violates this chapter, chapter 43-58, or chapter 43-59 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter, chapter 43-58, or chapter 43-59 without proof of actual damages sustained by any person.

SECTION 4. Chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

43-58-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine which must require as a minimum a four-year, full-time resident program of academic and clinical study and which:
 - a. Is accredited, or has the status of candidate for accreditation, by an organization approved by the board, such as the council on naturopathic medical education; or
 - b. Has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency under subdivision a and complies with the board's rules.
2. "Board" means the state board of integrative health care created under chapter 43-57.

3. "Homeopathic preparations" means nonprescriptive substances prepared according to the official homeopathic pharmacopoeia of the United States. The term does not include prescriptive drugs.
4. "Licensee" means an individual licensed by the board under this chapter.
5. "Naturopath" means an individual licensed to practice naturopathic health care under this chapter.
6. "Naturopathic health care", "naturopathic medicine", or "naturopathy" means a system of primary health care practiced by naturopaths for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. The purpose of naturopathic health care, naturopathic medicine, or naturopathy is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopath and through the use of natural therapies and therapeutic substances.
7. "Naturopathic physical application" means the therapeutic use by a naturopath of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, hydrotherapy, and naturopathic manipulative therapy. The term does not include manipulation of the spine.

43-58-02. Exemptions.

Many of the therapies used by a naturopath, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopaths, and their use, practice, prescription, or administration by individuals not licensed to practice naturopathic medicine is not prohibited by this chapter. This chapter does not restrict or apply to the scope of practice of any other profession licensed, certified, or registered under the laws of this state.

43-58-03. License required - Title restrictions.

1. Effective January 1, 2012, a person may not practice naturopathy without a current naturopathic license issued by the board.
2. A naturopath may use the title "naturopath" or "doctor of naturopathic medicine" and the abbreviation "N.D." when used to reflect either of these titles. Effective January 1, 2012, a person that uses these terms or initials as identification without having received a naturopathic license under this chapter is engaging in the practice of naturopathy without a license.

43-58-04. Qualifications for licensure.

In order to obtain a license to practice naturopathic medicine in this state, an application must be made to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.

43-58-05. Application for licensure.

1. An applicant for naturopathic licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is of good moral character and satisfied all of the requirements of this chapter and chapter 43-57, including:

- a. Successful graduation of an approved naturopathic medical college;
 - b. Successful completion of an examination prescribed or endorsed by the board, such as part I and part II of the naturopathic physicians licensing examinations;
 - c. Physical, mental, and professional capability for the practice of naturopathic medicine in a manner acceptable to the board; and
 - d. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and chapter 43-57. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

43-58-06. Initial applications - Education and testing exception.

Notwithstanding the education and examination requirements for licensure under subdivisions a and b of subsection 1 of section 43-58-05, if an applicant was a bona fide resident of the state from January 1, 2011, through December 31, 2011, was practicing naturopathic medicine in this state immediately preceding January 1, 2012, was required to apply for licensure under this chapter in order to continue that practice, and does not meet the educational or examination requirements or both, the board may issue a license or limited license to that applicant if, following an examination of the applicant's education and experience, the board determines the applicant has sufficient education and experience to prepare the applicant to practice naturopathic medicine.

43-58-07. Licensure granted without examination to individuals licensed in other states.

1. The board may issue a naturopathic license by endorsement to an applicant who has complied with licensure requirements and who has passed an examination given by a recognized certifying agency approved by the licensing agency if the board determines the examination was equivalent in every respect to the examination required under this chapter.
2. The board may enter reciprocal agreements with licensing agencies of other states providing for reciprocal waiver of further examination or any part of the examination.
3. If an applicant is exempt from the examination required under this chapter, the applicant shall comply with the other requirements for licensure. The board may adopt rules allowing for temporary and special licensure to be in effect during the interval between board meetings.

43-58-08. Practice of naturopathic health care.

1. A naturopath may practice naturopathic medicine as a limited practice of the healing arts as exempted under section 43-17-02. A naturopath may not:
 - a. Prescribe, dispense, or administer any prescription drug;

- b. Administer ionizing radioactive substances for therapeutic purposes;
 - c. Perform a surgical procedure; or
 - d. Claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession. A naturopath may not hold out to the public that the naturopath is a primary care provider.
2. A naturopath may prescribe and administer for preventive and therapeutic purposes a prescriptive device and the following nonprescriptive natural therapeutic substances, drugs, and therapies:
 - a. Food, vitamins, minerals, dietary supplements, enzymes, botanical medicines, and homeopathic preparations;
 - b. Topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, and therapeutic devices; and
 - c. Barrier devices for contraception.
 3. A naturopath may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by the board.

43-58-09. Public health duties.

A naturopath has the same powers and duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and chapter 43-57.

43-58-10. Employment by hospitals.

A hospital may employ a naturopath in the same manner as provided under section 43-17-42.

SECTION 5. Chapter 43-59 of the North Dakota Century Code is created and enacted as follows:

43-59-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care created under chapter 43-57.
2. "Licensee" means an individual licensed by the board under this chapter.
3. "Music therapist" is an individual who practices music therapy.

4. "Music therapy" is the specialized use of music and the materials of music to restore, maintain, and improve the following areas of functioning: cognitive, psychological, social or emotional, affective, physical, sensory or sensorimotor, motor, communicative, and physiological functioning. Techniques used in the practice of music therapy include the use of music to provide participatory individual and group experiences; musical improvisation; therapeutic development of verbal skills and nonverbal behavior; receptive music learning; lyric discussions; memory recall; music and imagery; self-expression through composition and songwriting; socialization and enhancement of self-esteem through music performance; relaxation to music, including stress and pain management; learning through music; cultural and spiritual expression; development of fine and gross motor skills through responses to rhythm; respiratory and speech improvements through sound production; sensory integration and stimulation; increased awareness of music for development of recreation and leisure interests; and interactive verbal techniques to help facilitate, elicit, or summarize the techniques listed in this subsection and build the therapeutic relationship.

43-59-02. Music therapy - License required - Title restrictions - Exceptions.

1. Effective August 1, 2012, a person may not hold out as practicing music therapy, hold out as being a music therapist, or use a title or other designation indicating the person is a music therapist in this state unless that person is an individual licensed under this chapter and chapter 43-57.
2. The licensure provisions of this chapter do not prevent or restrict the practice, services, or activities of any individual licensed in another profession or any individual supervised by a licensed professional from performing work incidental to the practice of that profession or occupation, if that individual does not represent the individual as a music therapist.

43-59-03. Qualifications for licensure.

1. In order to obtain a license to practice music therapy in this state, an application must be made to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.
2. An applicant for licensure to practice music therapy shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is an individual of good moral character, is at least eighteen years of age, and satisfied all the requirements established by the board which may include:
 - a. Successful graduation of a board-approved educational program;
 - b. Successful completion of a board-approved examination prescribed or endorsed by the board;
 - c. Hold in good standing a board-approved designation, such as:
 - (1) A music therapist board-certified credential from the certification board for music therapists; or

- (2) A professional designation from the national music therapy registry, which may include registered music therapist, certified music therapist, and advanced certified music therapist.
- d. Physical, mental, and professional capability for the practice of music therapy in a manner acceptable to the board;
- e. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter or chapter 43-57. The board may modify this restriction for cause.
3. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing a grant to the state board of integrative health for assisting with costs associated with establishing the board, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 7. APPLICATION. The terms of the initial state board of integrative health care may be for less than two years in order to establish staggered terms with no more than two members' terms expiring in any year.

Approved April 26, 2011

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