

HEALTH AND SAFETY

CHAPTER 251

S. B. No. 237
(Litten)

IMMUNITY FOR PHYSICIANS FURNISHING CERTAIN INFORMATION

AN ACT

To provide immunity to physicians furnishing information to hospital or extended care facility committees and members thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Hospital Utilization Committees—Reports—Immunity.) Any information, data, reports, or records made available to a mandatory hospital committee or extended care facility committee as required by state or federal law by a hospital or extended care facility in this state shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee. No physician, hospital, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution shall, by reason of furnishing such information, be liable in damages to any person, or be held to answer for willful violation of a privileged communication. No member of such a committee of a hospital or extended care facility shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

Approved March 5, 1969.

CHAPTER 252

H. B. No. 224

(Boustead, Boyum, Hentges, Weber, Berg)

**REPORTING OF CERTAIN PHYSICAL
AND MENTAL DISORDERS TO THE
HIGHWAY COMMISSIONER****AN ACT**

To create and enact section 23-02-32.1 of the North Dakota Century Code, relating to reporting deaths to the highway commissioner; to create and enact section 23-07-01.1 of the North Dakota Century Code, relating to reporting certain physical or mental disorders to the highway commissioner; to create and enact section 50-08-27.1 of the North Dakota Century Code, relating to reporting names of recipient of aid to the blind to the highway commissioner; (and to create and enact a new section of the North Dakota Century Code, relating to reporting the names of blind persons for which tax exemptions are claimed.)**

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1.) Section 23-02-32.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-02-32.1. Death Certificates—Information To Be Furnished.)

The state registrar of vital statistics shall furnish each month a report in writing to the state highway commissioner, information as to the full name, birthdate, sex and usual residence of a deceased for which a death certificate has been filed as provided in section 23-02-32. Such information to include information on all death certificates filed during the preceding month for all persons fourteen years of age and over.

Section 2.) Section 23-07-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07-01.1. Reporting of Physical or Mental Disorders.)

The state department of health shall define disorders charac-

****Note:** The proposed amendments of the senate committee on transportation, as shown on pp. 905-906 of the senate journal, erred in that the amendment to the title referred to the original bill, when in fact it should have have referred to the engrossed bill.

terized by lapses of consciousness, gross physical or mental impairments for the purposes of the reports hereinafter referred to:

1. All physicians may report immediately to the state department of health in writing, the name, date of birth and address of every person fourteen years of age or over coming before him for examination, attendance, care or treatment when there is reasonable cause to believe that such person due to physical or mental reason is incapable of safely operating a motor vehicle or diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments.

2. The state department of health shall report to the state highway commissioner the name, birthdate and address of every person reported under the provisions of subsection 1 of this section. Such reports to be furnished to the state highway commissioner upon receipt.

3. Such reports as required in this section shall be for the information of the state department of health and the state highway commissioner in determining the eligibility of any person to operate a motor vehicle on the highways of this state and shall be kept confidential and not divulged to any person or used as evidence in any trial, except that the reports may be admitted in proceedings under sections 39-06-33 and 39-06-39.

4. The physician-patient privilege provided for by subsection 3 of section 31-01-06 may not be asserted to exclude evidence regarding the mental or physical incapacity of a person to safely operate a motor vehicle in the reports as required under the provisions of this section.

5. Any physician who fails to make a report or who in good faith makes a report, gives an opinion or recommendation pursuant to this section or participates in any proceeding founded upon this section shall be immune from any liability, civil or criminal, that might otherwise be incurred, as a result of such report, except for perjury.

Section 3.) Section 50-08-27.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

50-08-27.1. Reporting Name of Recipient of Aid to the Blind.)

1. The state agency shall report to the state highway commissioner the name, birthdate and address of blind persons receiving assistance for the blind under the provisions of this chapter.

2. Such reports as required shall be for the information of the state highway department in determining the eligibility of any person to operate a motor vehicle on the highways of the state, and shall be kept confidential and not divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under sections 39-06-33 and 39-06-39.

Section 4. Amendment.) A new section to the North Dakota Century Code is hereby created and enacted to read as follows:

Reporting Name of Blind Person for Which Exemption Is Claimed.) The county auditor of each county shall report to the state highway commissioner, the names of all blind persons for which a property exemption is claimed. Such reports as required shall be for the information of the state highway department in determining the eligibility of any person to operate a motor vehicle on the highways of this state and shall be kept confidential and not divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under sections 39-06-33 and 39-06-39.

Approved March 29, 1969.

CHAPTER 253

S.B. No. 151
(Strinden, Butler)

BURIAL OF DECEASED PERSONS**AN ACT**

To amend and reenact sections 23-06-03 and 50-24-33 of the North Dakota Century Code, relating to the duty of burying deceased persons and the payment of burial costs.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 23-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03. Duty of Burial.) The duty of burying the body of a deceased person devolves upon the following persons:

1. If the deceased was married, upon the surviving husband or wife;
2. If the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased living within the state and possessed of sufficient means to defray the necessary expenses;
3. If an inquest is held and the deceased left no husband or wife and no kindred answering the description in subsection 2, upon the coroner conducting the inquest. The expense thereof shall be borne by the county as provided in section 11-19-18;
4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within the time required by this chapter, upon the person next specified. If all omit to act, upon the tenant, or if there is no tenant, upon the owner of the premises in which the death occurs or the body is found; or
5. If the deceased left no husband, wife, or kindred answering the foregoing description and did not leave means sufficiently to defray his funeral expenses, including the cost of a casket, the county welfare board

of the county in which the deceased had residence for poor relief purposes or if such residence cannot be established, then the county in which the death occurs, shall employ some person to arrange for and supervise the burial. The necessary and reasonable expense thereof, not exceeding three hundred fifty dollars, shall be borne by the county. The county also shall pay reasonable costs of transporting the body to the place of burial when burial is made in a cemetery out of the county in which death occurred, but not exceeding one hundred dollars.

Section 2. Amendment.) Section 50-24-33 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24-33. Recovery from Estate of Recipient of Assistance to the Aged, Blind, or Disabled.) On the death of any recipient of assistance to the aged, blind, or disabled under the provisions of this chapter the total amount of assistance paid under this chapter shall be allowed as a preferred claim against the estate of such person in favor of the state, after funeral expenses for recipient and his or her spouse, not to exceed in each individual case three hundred fifty dollars, and such expenses of the last illness of recipient and spouse as are authorized or paid by the county agency, have been paid, and after the expenses of administering the estate, including the attorney's fees approved by the court, have been paid. No claim shall be enforced against the following:

1. Real estate of a recipient for the support, maintenance or comfort of the surviving spouse or a dependent;
2. Personal property necessary for the support, maintenance or comfort of the surviving spouse or a dependent;
3. Personal effects, ornaments, or keepsakes of the deceased, not exceeding in value two hundred dollars;
4. Any real or personal property of a recipient which is held in trust for him by the federal government.

Approved February 25, 1969.

H. B. No. 336
(Wagner, Haugland)

AUTHORIZATION FOR DISSECTION OF A BODY

AN ACT

To amend and reenact subsection 3 of section 23-06-13 of the North Dakota Century Code

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Subsection 3 of section 23-06-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. When the husband, wife, or one of the next of kin of a deceased person, charged by law with the duty of burial, authorizes such dissection for the purposes of ascertaining the cause of death; or

Approved March 8, 1969.

CHAPTER 255

S. B. No. 182
(Longmire, Lowe, Stafne, Unruh)

ANATOMICAL GIFT AUTHORIZED

AN ACT

To authorize the gift of all or part of a human body after death for specified purposes; to amend and reenact sections 23-06-01.1 and 23-06-01.2 of the North Dakota Century Code; and to repeal section 23-06-01 of the North Dakota Century Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Definitions.) For purposes of this Act:

1. "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Donor" means an individual who makes a gift of all or part of his body.
4. "Hospital" means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.
5. "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".
6. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
7. "Physician" or "surgeon" means a physician or

surgeon licensed or authorized to practice under the laws of any state.

8. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Section 2. Persons Who May Execute an Anatomical Gift.)

1. Every person of sound mind and eighteen years of age or more and every person under the age of eighteen with the written consent of one parent or guardian may direct the manner in which his body shall be disposed of after his death and may give all or any part of his body for any purposes specified in section 3 of this Act, the gift to take effect upon death or upon separation of a part from his body during his lifetime.
2. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 3 of this Act:
 - a. The spouse.
 - b. An adult son or daughter.
 - c. Either parent.
 - d. An adult brother or sister.
 - e. A guardian of the person of the decedent at the time of his death.
 - f. Any other person authorized or under obligation to dispose of the body.
3. If the donee has actual notice of contrary indica-

tions by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection 2 of this section may make the gift after death or immediately before death.

4. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.
5. The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection 4 of section 7 of this Act.
6. The person described in subsection 1 of this section may direct the manner of disposition of any part of his body which becomes separated therefrom during his lifetime.

Section 3. Donees—Purposes for Which Anatomical Gifts May be Made.) The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

1. Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
2. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy.
3. Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
4. Any specified individual for therapy or transplantation needed by him.

Section 4. Manner of Executing Anatomical Gifts.)

1. A gift of all or part of the body under subsection 1 of section 2 of this Act may be made by will. The

gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

2. A gift of all or part of the body under subsection 1 of section 2 of this Act may also be made by document other than a will. The gift becomes effective upon the death of the donor or upon separation of a part from his body during his lifetime. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.
3. The gift may be made to a specified donee or without specifying a donee. If no donee is specified, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.
4. Notwithstanding subsection 2 of section 7 of this Act, the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

5. Any gift by a person designated in subsection 2 of section 2 of this Act shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

Section 5. Delivery of Document of Gift.) If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Section 6. Amendment or Revocation of the Gift.)

1. If the will, card, or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:
 - a. The execution and delivery to the donee of a signed statement;
 - b. An oral statement made in the presence of two persons and communicated to the donee;
 - c. A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or
 - d. A signed card or document found on his person or in his effects.
2. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection 1 of this section or by destruction, cancellation, or mutilation of the document and all executed copies thereof.
3. Any gift made by a will may also be amended or revoked in the manner provided for amendment or

revocation of wills, or as provided in subsection 1 of this section.

Section 7. Rights and Duties at Death.)

1. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.
2. The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. Such physician shall not participate in the procedures for removing or transplanting a part.
3. A person who acts in good faith in accordance with the terms of this Act or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.
4. The provisions of this Act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

Section 8. Uniformity of Interpretation.) This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 9. Amendment.) Section 23-06-01.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-01.1. Immunity from Liability.) A physician licensed in or authorized to practice medicine in this state who in good faith and when authorized as provided in this Act removes any part from the body of a deceased person

for the purposes of this Act shall not be liable in any civil action arising out of his good faith reliance on the terms of such authorization.

Section 10. Amendment.) Section 23-06-01.2 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-01.2. Application of Other Laws.) The provisions of sections 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-16, 23-06-17, and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the authorization for disposal of a body or parts thereof provided in this Act and for the purposes of this Act.

Section 11. Short Title.) This Act may be cited as the Uniform Anatomical Gift Act.

Section 12. Repeal.) Section 23-06-01 of the 1967 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 5, 1969.

CHAPTER 256

H.B. No. 198
(Belter, Weber)

QUALIFICATIONS AND COMPENSATION OF
COMMISSIONERS OF HOUSING AUTHORITIES

AN ACT

To amend and reenact section 23-11-05 of the North Dakota Century Code, providing for the compensation of commissioners of housing authorities.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 23-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-11-05. Commissioners of Authority—Appointment, Qualifications, Tenure, Compensation.) When the governing body of a city adopts a resolution, declaring there is need for a housing authority, it promptly shall notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for said city. When the governing body of a county adopts a resolution declaring there is need for a housing authority, said body shall appoint five persons as commissioners of the authority created for said county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, and thereafter, each commissioner shall be appointed for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the auditor of the city or county, as the case may be, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive ten dollars a day for each day necessarily devoted to the work of his office and he shall be entitled to the

necessary expenses, including traveling expenses, incurred in the discharge of his duties. The per diem compensation provided for in this section shall not exceed three hundred dollars in any one fiscal year.

Approved March 18, 1969.

CHAPTER 257

H. B. No. 387

(Aas, Haugland, Emerson, Sanstead, Anderson, J. Peterson)

ACQUISITION AND DISPOSAL OF REAL PROPERTY BY DISTRICT HEALTH UNITS

AN ACT

To amend and reenact section 23-14-14 of the North Dakota Century Code, relating to district health units acquiring and disposing of real and personal property and providing for the borrowing of funds and the disposition of property upon dissolution, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 23-14-14 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-14. Acquiring and Disposing of Property.) The district board of health may acquire by lease, purchase, construction or gift for district health office use and control both real and personal property for all purposes authorized by law or necessary to the exercise of the powers granted herein. The district board of health may finance the purchase, construction or equipping of a building on either owned or leased property for the use and purposes for which the health district is formed, and to carry out the functions of the health unit as provided by law, in either of the following ways:

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

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

Bonds so issued, and the income therefrom, shall be exempt from any taxes except inheritance, estate and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as hereinabove provided, shall never become an obligation or indebtedness of the state of North Dakota, or of the counties or the cities comprising the district board of health. Any such indebtedness may be foreclosed in any manner provided by law. The district board of health may also convey, sell, dispose of or otherwise transfer personal and real property acquired as provided herein. If upon dissolution of a district health unit there remains any balance in the treasury of the district after all obligations have been paid, the balance shall be paid into the general fund of the counties comprising the health district in proportion to the mill levy most recently assessed for budget purposes under the provisions of this chapter.

Section 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 25, 1969.

CHAPTER 258

S. B. No. 197
(Torgerson, Nasset, Sands, Freed)

REGULATION OF SALE OF FIREWORKS

AN ACT

To amend and reenact section 23-15-01 of the North Dakota Century Code, relating to the regulation of the retail sale of fireworks, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 23-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-15-01. "Fireworks" Defined.) The term fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers, or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Nothing in this regulation shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain of explosive composition per cap.

Any person, firm, or corporation having operated a retail business wherein merchandise was assessed by the local taxing authority, on April first immediately preceding thereto, and having a retail license as provided in section 23-15-04 may offer for sale and sell at retail, to persons of twelve years of age or more, only during the period beginning June 27 and ending July 5, both dates in-

clusive, the following items:

1. Star lights, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball);
2. Helicopter type flyers, total pyrotechnic composition not to exceed twenty grams each in weight;
3. Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed $\frac{3}{4}$ inch;
4. Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight;
5. Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over $\frac{1}{2}$ inch;
6. Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight;
7. Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five grams;
8. Comets and shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight;
9. Soft shell firecrackers not to exceed one and one-half inches in length and one-fourth inch in diameter; total pyrotechnic composition not to exceed two grains each in weight;
10. Whistles without report, total pyrotechnic composition not to exceed forty grams each in weight.

Section 2. Emergency.) This Act is hereby declared

to be an emergency and shall have full force and effect from and after the date of its passage and approval.

Approved March 4, 1969.

CHAPTER 259

S. B. No. 474

(Committee on Delayed Bills)

ALTERNATIVE COUNTY HOSPITAL LEVY

AN ACT

To amend and reenact sections 23-18-01 and 23-18-03 of the North Dakota Century Code, providing for an alternative county tax levy for hospitals of five mills for not more than fifteen years; and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 23-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-18-01. Hospital Associations Authorized—County Tax Levy in Aid—Election.) A county or community hospital association may be established in any county in this state. The executive officers and directors shall be residents of the county. The association may apply to the board of county commissioners of the county for a grant to aid in the erection of a nonsectarian county hospital. The application for the grant shall be in writing and shall state the incorporation of the association, the names and places of residence of all of its executive officers, and the assets of the association, and shall specify the mill rate of levy applied for, which shall not be in excess of eight mills upon the assessed valuation of the taxable property in the county. If the board of county commissioners shall be satisfied that the statements in the applications are true and that the association intends in good faith to establish a nonsectarian county or community hospital, it shall submit to the electors of the county the question of levying a tax in aid of such nonsectarian county or community hospital, for not more than five years at the mill rate as specified in the application, but not in ex-

cess of eight mills in any one year, or, in the alternative, for not more than fifteen years at a mill rate not in excess of five mills in any one year. The county auditor shall give notice of such election within the time and in the manner prescribed by law for the holding of county elections.

Section 2. Amendment.) Section 23-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-18-03. Fifteen-Year Levy Authorized—Rate.) If two-thirds of the ballots cast at such election are in favor of the authorization of the levy, the board of county commissioners shall make an annual levy for a period of not more than fifteen years at the mill rate approved at such election upon the assessed valuation of the taxable property in the county, which tax shall be spread and collected in the same manner as other taxes are collected. Such levy shall not be subject to the county levy limitations.

Section 3. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 14, 1969.

CHAPTER 260

S. B. No. 130
(Trenbeath, Van Horn, Decker)

AIR POLLUTION CONTROL

AN ACT

To maintain or obtain reasonable levels of air quality consistent with the protection of health, and the prevention of injury to plants, animal life and property, to promote the economic and social development of the state; to provide for the comfortable enjoyment of the natural attractions of the state to the greatest extent practical; to establish a statewide program of air pollution prevention, abatement and control; and to coordinate the activities of local and regional air pollution control programs within the state; and creating an air pollution control advisory council.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Definitions.) For purposes of this Act, the following words and phrases are defined:

1. "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, or any combination thereof, not including water vapor, water mist, or steam condensate;
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as to threaten or endanger or is injurious to human health or welfare, animal or plant life, or property;
3. "Emission" means a release of air contaminants into the outdoor atmosphere;
4. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent or agency of the foregoing.

Section 2. State Air Pollution Control Agency—Advisory Council.)

1. The North Dakota state department of health, hereinafter referred to as the department, is hereby designated as the agency to administer and coordinate a statewide program of air pollution control consistent with the provisions of this Act;
2. There is hereby established an air pollution control advisory council, hereinafter referred to as "the advisory council", of seven members to include the state health officer, the state geologist, and the state highway commissioner, and four other members to be appointed by the governor, one of whom shall be a representative of county or municipal government, one a representative of the solid fuels industry, one a representative of the fluid and gas fuels industry, and one appointed at large;
3. The term of office for the appointed members of the advisory council shall be four years, but of those first appointed two shall serve for two years and two for four years, and the lengths of their terms shall be designated by the governor at the time of appointment;
4. The advisory council shall select its own chairman from among its members. The state health officer, state geologist and state highway commissioner each may designate a principal deputy or assistant to act in his place and stead. The chief sanitary engineer of the state department of health, or his designated assistant, shall be the principal administrative officer of the council;
5. The advisory council shall hold at least one regular meeting each year, and such additional meetings as the chairman deems necessary, at a time and place to be fixed by the chairman. Special meetings shall be called by the chairman on the written request of any three members. Five members shall constitute a quorum;
6. The advisory council shall hold a public hearing to consider the adoption, amendment or repeal of rules, regulations and standards as provided in

this Act, and notice of such public hearing or hearings shall be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least thirty days prior to said hearing and which hearing shall be held in the state capitol in Bismarck, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations and standards, and the advisory council shall consider any other matters related to the purposes of this Act and may make recommendations on its own initiative to the department concerning the administration of this Act.

Section 3. Power and Duties of the Department.)

1. Encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this Act;
2. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and several parts thereof;
3. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control;
4. Advise, consult, and cooperate with other public agencies and with affected groups and industries; and
5. Issue such orders as may be necessary to effectuate the purposes of this Act and enforce the same by all appropriate administrative and judicial procedures.

Subject to the approval of the advisory council the department is empowered to:

1. Adopt, amend, and repeal rules and regulations implementing and consistent with this Act.

Section 4. Classification and Reporting of Air Pollution Sources.)

1. Subject to the approval of the advisory council the department, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other criteria which relate to air pollution and may require reporting for any of such class or classes. Classifications made pursuant to this subsection may apply to the state as a whole or to any designated area of the state and shall be made with special reference to effects on health, economic, and social factors, and physical effects on property.
2. Any person operating or responsible for the operation of air contaminant sources of any class for which rules and regulations of the department require reporting shall make reports containing information as may be required by the department relevant to air pollution and available or capable of being assembled in the normal course of operations.

Section 5. Right of On-Site Inspection.) Any duly authorized officer, employee, or representative of the department may, with the consent of the person or persons in control of an air contaminant source, enter and inspect any property, premise, or place on or at which such an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purposes of ascertaining the state of compliance with this Act and rules and regulations in force pursuant thereto. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by a court of competent jurisdiction to such officer, employee, or representative of the department for the purpose of enabling him to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials and warrant, nor shall any person obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations. If requested, the owner

or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Section 6. Confidentiality of Records.) Any records or other information furnished to or collected by the department concerning one or more air contaminant sources, which records or information relate to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, provided that such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section.

Section 7. Emission Control Requirements.)

1. The department may establish emission control requirements and requirements for open burning (including appropriate prohibition thereof) for all of the areas in which local air pollution control programs are not in effect. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of the Act;
2. The department may establish air quality standards for the state as a whole on the basis of air quality to protect human health, and may require the emission control requirements of any local program to be consistent with such standards;
3. Nothing in this Act shall be construed to authorize the department to specify the type, design, method of installation or type of construction of any equipment or manufacturing processes, or the kind of composition of fuels permitted to be sold, stored or used.

Section 8. Administrative Procedure and Judicial Review.) Any proceeding under this Act for:

1. The issuance of modification of rules and regulations including emergency orders relating to control of air pollution; or
2. Determining compliance with rules and regulations of the department,

shall be conducted in accordance with the provisions of chapter 28-32 of the North Dakota Century Code, and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this Act, such order shall be effective immediately, but on application to the department shall be afforded a hearing before the state health council within ten days. On the basis of such hearing, the emergency order shall be continued, modified or revoked within thirty days after such hearing.

Section 9. Injunction Proceedings.) The violation of any provision of this Act, or any rule, regulation, or order issued thereunder is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any rule, regulation, or order issued thereunder, the state health officer in accordance with the laws of this state governing injunctions and other process may maintain an action in the name of the people of the state enjoining such action or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Section 10. Penalties.) Any person violating any provision of this Act or any rule, regulation, or order issued thereunder, shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Approved March 13, 1969.