

JUDICIAL PROCEDURE, CIVIL

CHAPTER 331

SENATE BILL NO. 2256
(Stenehjem)

MALPRACTICE ACTION LIMITATION

AN ACT to amend and reenact subsection 4 of section 28-01-18 of the North Dakota Century Code, relating to actions having two-year limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 28-01-18 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. An action for injuries done to the person of another, when death ensues from such injuries, and the cause of action shall be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the cause of action shall be deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.

Approved March 18, 1981

CHAPTER 332

HOUSE BILL NO. 1619
(Wentz, C. Anderson)

MEDICAL PROFESSIONAL NEGLIGENCE ACTION

AN ACT to require expert opinion before initiating an action based upon medical professional negligence, except in obvious cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. EXPERT OPINION REQUIRED TO MAINTAIN AN ACTION BASED UPON ALLEGED MEDICAL NEGLIGENCE EXCEPT IN OBVIOUS CASES. Any action for injury or death against a physician, nurse, or hospital licensed by this state based upon professional negligence shall be dismissable on motion unless the claimant has obtained an admissible expert opinion to support the allegation of professional negligence within three months of the commencement of the action or at such later date as set by the court. This Act shall not apply to alleged lack of informed consent, unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved March 26, 1981

CHAPTER 333

HOUSE BILL NO. 1119
(Unhjem)

ORDER OF TRIAL AND CONDUCT OF JURORS

AN ACT to amend and reenact sections 28-14-10 and 28-14-18 of the North Dakota Century Code, relating to the order of trial and the conduct of jurors in retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-10. ORDER OF TRIAL. When the jurors have been sworn, the trial must proceed in the following order, unless the judge for special reasons directs otherwise:

1. The plaintiff after stating the issue and ~~his~~ the plaintiff's case must produce the evidence on ~~his~~ the plaintiff's part;
 2. The defendant then may open ~~his~~ the defendant's defense and offer ~~his~~ the defendant's evidence in support thereof;
 3. The parties then respectively may offer rebutting evidence only, unless the court for good reasons in furtherance of justice permits them to offer evidence upon their original case;
 4. ~~When--the--evidence--is--concluded,--unless~~ The court may charge the jury when the evidence is concluded or after the argument, if any, of the plaintiff and defendant;
 5. Unless the case is submitted to the jury on either or both sides without argument, the plaintiff must commence and may conclude the argument; and
- 5- 6. If several defendants having separate defenses appear by different counsel, the court must determine their relative order in the evidence and argument, ~~and~~

~~6.---The-court-then-may-charge-the-jury.~~

SECTION 2. AMENDMENT. Section 28-14-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-18. CONDUCT OF JURORS IN RETIREMENT. When the case finally is submitted to the jurors, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict, are temporarily dismissed by the court, or are permanently discharged by the court. Unless, by order of the court, the officer having the jurors under ~~his~~ the officer's charge must not suffer any communication to be made to them, or to make any himself except to ask them if they have agreed upon a verdict, and ~~he the officer,~~ before the verdict is rendered, must not communicate to ~~any person anyone~~ anyone the state of their deliberations or the verdict agreed upon. Where the jurors have not agreed upon a verdict by twelve midnight of any day of deliberations, the trial judge may temporarily dismiss the jurors from twelve midnight to eight a.m. that day when the jurors shall resume deliberations. Where a trial jury contains both ~~men male~~ and ~~women female~~ members, the trial judge, ~~---if---he---deems---it---proper,~~ may direct that the ~~women female~~ members of the jury be placed in charge of a ~~woman female~~ bailiff and permitted to retire to a suitable place for rest, and the ~~men male~~ members of the jury placed in charge of a ~~man male~~ bailiff for a similar purpose. In all cases where the jurors are ~~permitted to be dismissed or separated,~~ as above stated, the trial judge shall admonish the members thereof that they must not in any manner discuss the case ~~among themselves with anyone,~~ nor permit anyone to discuss it with them, while they are so dismissed or separated, and that they must discuss and consider the case only in the room when all members of the jury are present.

Approved March 2, 1981

CHAPTER 334

HOUSE BILL NO. 1426
(Conmy)

INTEREST RATE ON JUDGMENTS

AN ACT to amend and reenact section 28-20-34 of the North Dakota Century Code, relating to the interest rate allowable on judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-34. INTEREST RATE ON JUDGMENTS. Interest shall be payable on judgments recovered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate shall not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest shall be payable at the ~~legal rate as provided in section 47-14-05.~~ Such interest rate of twelve percent per annum and shall not be compounded in any manner or form. Interest on all judgments recovered in the courts of this state before July 1, 1961 1981, shall remain at the rate of two percent per annum which was legally prescribed at the time the judgments were entered, and such interest must not be compounded in any manner or form.

Approved March 18, 1981

CHAPTER 335

SENATE BILL NO. 2429
(Senators Fritzell, Goodman)
(Representative Vander Vorst)

BANKRUPTCY EXEMPTIONS

AN ACT to create and enact two new sections to chapter 28-22 of the North Dakota Century Code, relating to the availability of federal bankruptcy exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 28-22 of the North Dakota Century Code are hereby created and enacted to read as follows:

NONAVAILABILITY OF FEDERAL BANKRUPTCY EXEMPTIONS. In accordance with the provisions of section 522(b) of the Bankruptcy Reform Act of 1978 (Pub. L. 95-598; 92 Stat. 2586; 11 U.S.C. 522(b)), residents of this state shall not be entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state shall be limited to claiming those exemptions allowable by North Dakota law.

ADDITIONAL BANKRUPTCY EXEMPTIONS. In addition to the exemptions provided herein, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unmaturred life insurance policy not to exceed four thousand dollars.
4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the

extent reasonably necessary for the support of the debtor and any dependent of the debtor.

- b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
- c. A social security benefit.

Approved March 19, 1981

CHAPTER 336

HOUSE BILL NO. 1043
 (Legislative Council)
 (Interim Administrative Rules Committee)

AGENCIES SUBJECT TO ADMINISTRATIVE PROCEDURES

AN ACT to create and enact sections 4-09.1-06, 4-26-08.1, and 19-01-19 of the North Dakota Century Code, relating to appeals from decisions of the state seed commissioner and the state laboratories department; and to amend and reenact sections 4-09-21, 4-11-19, 4-11-20, 4-26-08, 19-01-02, 19-02-14, 19-03.1-15, 19-03.1-26, 19-07-02, 19-08-03, 19-10-02, 19-14-06, 19-16.1-06, 19-17-04, 19-18-05, 19-21-05, 23-09-02.1, 24-17-10, 24-17-15, and 39-21-44 of the North Dakota Century Code, relating to exempting interest rate regulations of the state banking board from the notice and hearing requirements of Administrative Agencies Practice Act and subjecting the seed commission, laboratories department, highway corridor board, and hazardous materials regulations of the motor vehicle department to the requirements of the Administrative Agencies Practice Act; and to repeal sections 24-17-13 and 24-17-14 of the North Dakota Century Code, relating to hearing and rule publication requirements of the highway corridor board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-21. ENFORCEMENT - HEARING BY COMMISSIONER - ~~ADMINISTRATION OF OATHS AND TAKING TESTIMONY~~ APPLICATION OF CHAPTER 28-32. The commissioner shall ~~be charged with the enforcement of the provisions of~~ enforce this chapter and ~~of the~~ regulations made thereunder. Whenever the commissioner ~~shall be~~ is of the opinion that a violation of this chapter or of the regulations made thereunder exists, he shall ~~designate a time and place for a hearing and give notice thereof to the person involved.~~ The hearing shall be private, and the person involved shall have the right to introduce evidence in person, or by agent or attorney hold a hearing as provided by chapter 28-32. If after ~~said~~ the hearing, or without hearing, if the person involved fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he

shall proceed as hereinafter provided. ~~The commissioner and his agents may administer oaths and take testimony for any purpose required to carry out the provisions of this chapter.~~ Any proceeding under this chapter for adopting or modifying rules and regulations and determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 2. Section 4-09.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-09.1-06. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this chapter for issuing or modifying rules and determining compliance with rules of the commission or commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 3. AMENDMENT. Section 4-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-11-19. RULES AND REGULATIONS -- COMMISSIONER-TO-MAKE. The commissioner shall make, publish, and amend uniform may adopt rules and regulations, not inconsistent consistent with the provisions of this chapter, to enforce the provisions of this chapter and, to govern the rates charged by, and the buying, selling, advertising, and trading practices of wholesale potato dealers, and shall make and publish to provide necessary definitions of terms and conditions relative to this chapter. The commissioner may alter or suspend such rules, regulations, and definitions when necessary. Such rules, regulations, and definitions shall be approved by the attorney general as to form and legality, shall be filed in the office of the commissioner, and shall be published once in a newspaper of general circulation designated by the commissioner, published in the city where the commissioner's office is located. Thereafter, such Any rules and regulations shall have the force and effect of law. An affidavit of such publication setting forth the contents of the same, made by the publisher or manager of such newspaper, shall be kept on file in the office of the commissioner. Such affidavits, or copies thereof certified by the commissioner, shall be prima facie evidence of the facts therein contained and of the due adoption and publication of such rules and regulations adopted by the commissioner shall be adopted pursuant to chapter 28-32.

SECTION 4. AMENDMENT. Section 4-11-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-11-20. CONDUCTING HEARINGS AND CANCELING LICENSES - PROCEDURE -- PUNISHMENT FOR CONTEMPT APPLICATION OF CHAPTER 28-32. The commissioner may receive complaints against any person dealing in, shipping, transporting, storing, or selling potatoes, and may make any and all necessary investigations relative to the handling of, storing, shipping, or dealing in potatoes at wholesale, and he and his agents, at all times, shall have access to all buildings,

yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. The commissioner, upon complaint being filed with him for any alleged violation of the provisions of this chapter or the regulations issued thereunder, or upon information furnished by any of his agents or by any other person, forthwith may suspend and, upon ten days' notice and an opportunity to be heard, may revoke and cancel any license or any agent's identification card issued by him. ~~The commissioner may issue subpoenas requiring the attendance of witnesses before him or his agent, and may compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and he may compel the production before him or his agents of all necessary books, papers, and other documents, articles, or instruments. He or his agents may administer oaths and take testimony for the purposes of this chapter. The commissioner or his agent shall give the complainant a written report of the investigation, which shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas of the commissioner or his duly authorized agents shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner.~~ Any hearing held on any complaint or information received by the commissioner shall be conducted pursuant to chapter 28-32. Any party may appeal a decision of the commissioner to the district court in the manner provided by chapter 28-32.

SECTION 5. AMENDMENT. Section 4-26-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-26-08. REGULATIONS. ~~For the purpose of carrying into effect the provisions of this chapter, the~~ The seed commissioner may make adopt such regulations pursuant to the provisions of chapter 28-32 as he considers necessary or advisable to implement the provisions of this chapter. The power of the seed commissioner to make regulations under this section shall extend to:

1. Defining, redefining, reducing, or extending the limits of a seed potato control area₇.
2. Prescribing additional powers and duties of committees under this chapter₇.
3. Prescribing of minimum requirements which must be met in the seed selection, seed treatment, field isolation, cultural practices and in disease removal and insect control₇.
4. Prescribing the methods of seed potato control work to be followed by the committee in respect to any seed potato control area₇.
5. ~~The prescribing~~ Prescribing and authorizing of the quality of seed to be grown within a seed potato control area₇.

6. ~~The--canceling~~ Canceling of any or all seed potato control areas~~7.~~
7. Providing for the inspection, testing, and approval of the seed to be planted and grown in the area~~7--and.~~
8. ~~To--prescribe--such~~ Prescribing any other regulations as may be expedient or necessary to carry out the purposes and provisions of this chapter.

SECTION 6. Section 4-26-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-26-08.1. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this chapter for issuing or modifying rules and regulations and determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 7. AMENDMENT. Section 19-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-02. STATE LABORATORIES DEPARTMENT - STATE LABORATORIES COMMISSION - MEMBERS, DUTIES, MEETINGS, QUORUM. The state laboratories department shall be maintained as one of the departments of the state. The management, control, and supervision of such department shall be placed in the state laboratories commission, which shall be composed of the governor, who shall act as chairman thereof, the state treasurer, and the attorney general. It shall meet whenever necessary, and at least once a month. The commission shall ~~may~~ adopt rules and regulations pursuant to chapter 28-32 as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction~~7--but--such rules--and--regulations--shall--not--be--inconsistent--with--the--provisions of--the--Uniform--Controlled--Substances--Act.~~ The commission shall also establish, and may alter as the need arises, a fee schedule for private samples that are submitted to the department for laboratory analysis. ~~A--majority--of--the--members--of--the--commission--shall constitute--a--quorum--for--the--transaction--of--business.~~

SECTION 8. Section 19-01-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-01-19. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceeding under this title for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 9. AMENDMENT. Section 19-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-14. SALE IN DECEPTIVE PACKAGES PROHIBITED - DEPARTMENT MAY ESTABLISH RULES RELATING TO SIZE AND WEIGHT OF PACKAGES OF FOODS

AND DRUGS. No person, firm, or corporation shall manufacture, sell, or expose for sale, any article of food or drug in any package or container, the size or shape of which may deceive or tend to deceive the purchaser of such product as to the contents of said package or container. In order to prevent fraud and deception, the department may ~~establish, publish, and enforce~~ adopt rules and regulations pursuant to chapter 28-32 relative to the size, weight, or style of package of all drug and food commodities, except lard and bread, ~~and such rules and regulations shall have the force and effect of law.~~

SECTION 10. AMENDMENT. Section 19-03.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-15. RULES. The ~~state laboratories~~ department may ~~promulgate~~ adopt rules pursuant to chapter 28-32 and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

SECTION 11. AMENDMENT. Section 19-03.1-26 of the 1977 Pocket Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-26. DISPOSING OF NEEDLES AND PARAPHERNALIA. Any registrant who shall use, administer, dispense or cause to be used, administered, or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eyedropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eyedropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The state laboratories department may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32 setting out the specific manner in which the provisions of this section shall be carried out. Any registrant who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a class A misdemeanor.

SECTION 12. AMENDMENT. Section 19-07-02 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-07-02. RULEMAKING POWER. The department ~~shall~~ may ~~adopt and publish~~, only upon approval of the commissioner of agriculture, appropriate regulations pursuant to chapter 28-32 to establish standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, and sanitation, and shall be guided in establishing such standards by United States department of agriculture regulations governing the grading and inspecting of eggs.

SECTION 13. AMENDMENT. Section 19-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-03. REQUIREMENTS FOR LABELING - STANDARDS OF PURITY AND QUALITY. The requirements for labeling and standards of purity and quality of all beverages included in this chapter shall be the same as those required under chapter 19-02, together with such other standards, rules, and regulations as the department may ~~establish~~ adopt pursuant to chapter 28-32 to carry out the intent of this chapter. ~~Such--standards,--rules,--and--regulations--shall--have--the--force--and--effect--of--law.~~

SECTION 14. AMENDMENT. Section 19-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-02. DEPARTMENT TO ENFORCE LAW - REGULATION OF PETROLEUM PRODUCTS. The provisions of this chapter shall be enforced by the department. The department may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32 for the interpretation of the provisions and intent of this chapter, ~~and the same shall have the force and effect of law.~~

SECTION 15. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-14-06. DEPARTMENT MAY MAKE ADOPT RULES AND REGULATIONS, TAKE TESTIMONY, GRANT PUBLIC HEARINGS. The department may make adopt rules and regulations pursuant to chapter 28-32 governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter, but no such rule or regulation shall impose any requirement for registration other than is provided by section 19-14-03. It may take expert and other testimony whenever it deems such testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 16. AMENDMENT. Section 19-16.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-06. RULES AND REGULATIONS. The department ~~is hereby empowered to promulgate and may~~ may adopt such reasonable rules, regulations, and standards pursuant to chapter 28-32 as may be necessary in order to secure the efficient administration of this chapter.

SECTION 17. AMENDMENT. Section 19-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-04. ENFORCEMENT.

1. The commissioner ~~is hereby charged with the duty of enforcing the provisions of~~ shall enforce this chapter and he ~~is hereby authorized and directed to make, amend or rescind~~ may adopt rules, regulations, and orders pursuant

to chapter 28-32 for the efficient enforcement of this chapter.

2. Whenever the vitamin and mineral requirements set forth in sections 19-17-02 and 19-17-03 are no longer in conformity with the legally established standards governing the interstate shipments of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, ~~is authorized and directed to~~ shall modify or revise such requirements to conform with amended standards governing interstate shipments.
3. In the event of findings by the commissioner that there is an existing or imminent shortage of any ingredient required by sections 19-17-02 and 19-17-03, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the commissioner shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour or white bread or rolls, and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the commissioner. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the commissioner on his own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The commissioner shall publish notice of any such hearing at least ten days prior thereto. Whenever the commissioner has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue an order to become effective not less than thirty days after the publication thereof, revoking such previous order; provided, however, that undisposed flour stocks of flour on hand at the effective date, of such revocation order, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of.
4. ~~All orders, rules and regulations adopted by the commissioner pursuant to this chapter shall be published~~

~~in the manner hereinafter prescribed, and within the limits specified by this chapter, shall become effective upon such date as the commissioner shall fix.~~

~~5. Whenever under this chapter publication of any notice, order, rule or regulation is required, such publication shall be made at least twice in at least one daily newspaper of general circulation printed and published in this state.~~

6. For the purpose of this chapter, the commissioner, or such officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

SECTION 18. AMENDMENT. Section 19-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-05. DETERMINATIONS - RULES AND REGULATIONS - UNIFORMITY. The commissioner is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;
2. To determine whether economic poisons are highly toxic to man and whether the use thereof should be restricted; and
3. To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of subsection 4 of section 19-18-03.

The commissioner, after due public hearing, may make adopt appropriate rules and regulations pursuant to chapter 28-32 for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States department of agriculture with respect to economic poisons in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 19. AMENDMENT. Section 19-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-05. REGULATIONS AND--HEARINGS. The department ~~is authorized, after public hearing following due notice, to promulgate~~ may adopt regulations pursuant to chapter 28-32 for the efficient enforcement of this chapter. If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, it shall ~~promulgate~~ adopt regulations exempting the substance from these requirements, to an extent consistent with adequate protection of the public health and safety.

If the department finds that an article subject to this chapter cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, it may declare the article to be a banned hazardous substance and require its removal from commerce.

The department shall cause the regulations ~~promulgated~~ adopted under this chapter to conform with the regulations established pursuant to the Federal Hazardous Substances Act.

SECTION 20. AMENDMENT. Section 23-09-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-02.1. SMOKE DETECTION DEVICES OR OTHER APPROVED ALARM SYSTEMS - ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Each hotel, motel, and lodginghouse shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the state laboratories department, in cooperation with the state fire marshal. The ~~laboratories~~ department, in cooperation with the state fire marshal, shall adopt and ~~promulgate~~ reasonable rules and regulations pursuant to chapter 28-32 governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The ~~laboratories~~ department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section. Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 21. AMENDMENT. Section 24-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-10. RULES AND REGULATIONS ~~HAVE THE FORCE AND EFFECT OF LAW.~~ All determinations, rules, regulations, and promulgations by the board shall be ~~filed with the commissioner and shall have the force and effect of law upon such filing~~ adopted pursuant to chapter 28-32.

SECTION 22. AMENDMENT. Section 24-17-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-15. APPEALS TO DISTRICT COURT - APPLICATION OF CHAPTER 28-32. Any person, or persons, jointly and severally, aggrieved by a decision of the board under this chapter, may appeal therefrom to the district court ~~and to the supreme court in accordance with sections 28-32-15 through 28-32-21, provided, however, that no other sections in pursuant to chapter 28-32 shall be applicable to any proceedings of the board.~~

SECTION 23. AMENDMENT. Section 39-21-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-44. VEHICLE TRANSPORTING EXPLOSIVES OR HAZARDOUS MATERIALS - ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall ~~at all times~~ comply with ~~the provisions of~~ this section.

1. The vehicle shall be marked or placarded on each side and the rear with the word "Explosives" or the words "Hazardous Materials" as appropriate in letters not less than eight inches [20.32 centimeters] high, or there shall be displayed on the rear of the vehicle a red flag not less than twenty-four inches [60.96 centimeters] square marked with the word "Danger" in white letters six inches [15.24 centimeters] high.
2. The vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle.

3-

The department shall promulgate, pursuant to chapter 28-32, adopt such rules as may be necessary for the safe transportation of hazardous materials. Rules shall duplicate or be consistent with current hazardous materials regulations of the United States department of transportation. The department is authorized to adopt the hazardous materials regulations by reference and any adoption shall be construed to incorporate amendments as may be made from time to time. Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

SECTION 24. REPEAL. Sections 24-17-13 and 24-17-14 of the North Dakota Century Code are hereby repealed.

Approved February 16, 1981

CHAPTER 337

HOUSE BILL NO. 1042
 (Legislative Council)
 (Interim Administrative Rules Committee)

“ADMINISTRATIVE AGENCY” DEFINED

AN ACT to amend and reenact subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the definition of administrative agency as used in the law governing the procedure and practice of administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 28-32-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~"Administrative agency" or "the agency" includes--any officer,--board,--commission,--bureau,--department,--or tribunal--other--than--a--court,--having--statewide--jurisdiction and--authority--to--make--any--order,--finding,--determination, award,--or--assessment--which--has--the--force--and--effect--of--law and--which--by--statute--is--subject--to--review--in--the--courts--of this--state.~~ means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The department of accounts and purchases except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07 and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the division of disaster emergency services.

* NOTE: Section 28-32-01 was amended by section 2 of Senate Bill No. 2044, chapter 341.

- c. The council on the arts.
- d. The state auditor.
- e. The business and industrial development commission.
- f. The dairy products promotion commission.
- g. The education factfinding commission.
- h. The educational broadcasting council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota and the North Dakota mill and elevator association.
- m. The director of institutions.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. The postsecondary education commission.
- r. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- s. The state board of public school education while administering the state school construction fund.
- t. The social service board with respect to its rules under the family subsidy program.
- u. The state fair association.
- v. The state toxicologist.
- w. The board of university and school lands.
- x. The administrative committee on veterans affairs.
- y. The wheat commission.

Approved March 31, 1981

CHAPTER 338

HOUSE BILL NO. 1044
 (Legislative Council)
 (Interim Administrative Rules Committee)

"RULE" DEFINED

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the definition of rules as that term is used with respect to the law governing the practice and procedure of administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Rules---and---regulations"---include---rules,---regulations, orders,---and---amendments---thereto,---of---general---application, issued---by---any---officer,---board,---commission,---bureau,---or department---interpreting,---regulating---the---application---of,---or regulating---the---procedure---under,---the---statutes---which---they are---charged---respectively---with---administering,---Such---term shall---not---apply---to---rules---or---regulations---adopted---or---orders made---by---an---administrative---agency---relating---solely---to---the internal---operation---of---the---agency,---nor---to---rules---or regulations---adopted---or---orders---made---relating---to---the management,---admission,---expulsion,---or---graduation---of students---from---educational---institutions,---nor---to---rules---or regulations---adopted---or---orders---made---relating---to---the management,---confinement,---discipline,---or---release---of---inmates of---any---penal---or---charitable---institution. "Rule" means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the amendment, repeal, or suspension of an existing rule. The term does not include:

- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.

* NOTE: Section 28-32-01 was amended by section 2 of Senate Bill No. 2044, chapter 341.

- b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
- (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.

Approved March 3, 1981

CHAPTER 339

SENATE BILL NO. 2043
 (Legislative Council)
 (Interim Administrative Rules Committee)

RULE APPROVAL BY ATTORNEY GENERAL

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to the rulemaking power of an agency under the law governing the practice and procedure of administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall have the authority is authorized to promulgate~~ adopt, and from time to time to amend or repeal, reasonable rules ~~and regulations~~ in conformity with the provisions of any statute administered or ~~to be administered, enforced or to be enforced,~~ by such the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

- 1-~~Adopt~~ adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule.
- 2- Every rule ~~or regulation~~ proposed by any administrative agency shall be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule.

Approved March 6, 1981

* NOTE: Section 28-32-02 was also amended by section 3 of Senate Bill No. 2044, chapter 341, and by section 1 Senate Bill No. 2288, chapter 340.

CHAPTER 340

SENATE BILL NO. 2288
(Redlin)

RULE APPROVAL BY ATTORNEY GENERAL

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to the rulemaking power of an agency under the law governing the practice and procedure of administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall have the authority is authorized to promulgate adopt,~~ and from time to time to amend or repeal, reasonable rules and regulations in conformity with the provisions of any statute administered or ~~to be administered, enforced or to be enforced,~~ by such the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

- 1- ~~Adopt~~ adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule.
- 2- Every rule ~~or regulation~~ proposed by any administrative agency shall be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality where the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable. The attorney general may suggest any revision or rewording of a rule to meet objections as to legality.

Approved March 19, 1981

* NOTE: Section 28-32-02 was also amended by section 3 of Senate Bill No. 2044, chapter 341, and by section 1 of Senate Bill No. 2043, chapter 339.

CHAPTER 341

SENATE BILL NO. 2044
 (Legislative Council)
 (Interim Administrative Rules Committee)

ADMINISTRATIVE RULES EFFECTIVE DATE

AN ACT to amend and reenact sections 4-18.1-21, 28-32-01, 28-32-02, 28-32-03, 28-32-03.1, 28-32-03.2, 28-32-04, and 28-32-07 of the North Dakota Century Code, relating to judicial review of rulemaking by the milk stabilization board, rulemaking powers of administrative agencies, filing and effect of rules, and publication of the administrative code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-18.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-21. JUDICIAL REVIEW OF RULEMAKING ACTION BY THE BOARD.

1. The validity or applicability of any action taken by the board in its rulemaking capacity may be determined in a suit for declaratory judgment in the district court ~~for the county of Burleigh.~~
2. Any such suit must be filed within thirty ~~(30)~~ days after the date on which ~~a copy of the notice of such the action and the attorney general's opinion thereon are mailed~~ by the board ~~to the secretary of the state bar association~~ becomes effective pursuant to section 28-32-03.
3. The court shall declare the board action invalid if ~~it~~ the court finds that the action in question violates constitutional provisions or exceeds the statutory authority of the board or was adopted without substantial compliance with rulemaking procedures. The board shall be made a party to the suit.
4. No stay of a board stabilization plan or regulation properly adopted may be granted prior to final determination of any such matter by the court having jurisdiction thereof.

* SECTION 2. AMENDMENT. Section 28-32-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise provides:

1. "Administrative agency" or "the agency" includes any officer, board, commission, bureau, department, or tribunal other than a court, having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state.
2. ~~"Rules---and---regulations"---include---rules,---regulations, orders,---and---amendments~~ "Rule" includes any rule, regulation, order, and amendment thereto, of general application, issued adopted by any officer, board, commission, bureau, or department interpreting, regulating the application of, or regulating the procedure under, the statutes which they are charged respectively with administering. Such term ~~shall~~ does not apply to ~~rules--or regulations~~ any rule, regulation, or order adopted or orders--made by an administrative agency relating solely to the internal operation of the agency, nor to ~~rules--or regulations~~ any rule, regulation, or order adopted or orders--made relating to the management, admission, expulsion, or graduation of students from educational institutions, nor to ~~rules--or--regulations~~ any rule, regulation, or order adopted or orders--made relating to the management, confinement, discipline, or release of inmates of any penal or charitable institution.
3. "Person" includes an individual, association, partnership, corporation, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
4. "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.
5. "Party" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
6. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.

* NOTE: Subsection 1 of section 28-32-01 was also amended by section 1 of House Bill No. 1042, chapter 337, and subsection 2 of section 28-32-01 was also amended by section 1 of House Bill No.1044, chapter 338.

* SECTION 3. AMENDMENT. Section 28-32-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. RULEMAKING POWER OF AGENCY - NOTICE - ATTORNEY GENERAL'S OPINION. Every administrative agency ~~shall have the authority is~~ authorized to promulgate, adopt, and from time to time to amend or repeal, reasonable rules and regulations in conformity with the provisions of any statute administered or ~~to be administered~~, enforced ~~or to be enforced~~, by such the agency, and to prescribe methods and procedure required in connection therewith. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

- 1- ~~Adopt~~ adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule.
- 2- Every rule ~~or regulation~~ proposed by any administrative agency shall be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion.

SECTION 4. AMENDMENT. Section 28-32-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03. FILING OF RULES AND REGULATIONS - FORCE AND EFFECT OF RULES - FORM AND STYLE OF RULES.

1. ~~A copy of each rule and regulation promulgated and adopted by an administrative agency shall be filed in the office of the attorney general, and when filed, shall have the force and effect of law until amended or repealed by the agency or until the same is declared invalid by a final court decision. A copy of each rule and regulation adopted by any an administrative agency, and the attorney general's opinion thereon, shall also be filed in with the office of the legislative council prior to final printing or duplication by an agency for publication in the North Dakota Administrative Code. Each administrative agency extensively amending or revising its rules and regulations after July 1, 1977, as determined by the office of the legislative council, shall submit such rules and regulations in the proper format, style, and arrangement prescribed under subsection 3 for publication in the North Dakota Administrative Code. Extensive amendments or revisions of administrative rules and regulations shall be published in the administrative code by the office of the legislative council as seen as practicable after submission by an agency. Prior to July 1, 1978, all~~

* NOTE: Section 28-32-02 was also amended by section 1 of Senate Bill No. 2043, chapter 339, and by section 1 of Senate Bill No. 2288, chapter 340.

~~administrative agencies shall revise their rules and regulations not previously published in the administrative code for publication in the administrative code. After July 1, 1978~~ Except as provided in section 28-32-03.1, rules and regulations not published in the administrative code shall be invalid.

2. Rules and regulations approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council at the ~~time of or after initial publication of the code~~ shall become effective ~~ten days~~ the first day of the month after the month of publication as provided for in section 28-32-03.1, except that:
 - a. If a later date is required by statute or specified in the rule, the later date shall be the effective date.
 - b. Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon approval by the attorney general, or at a stated date less than ten days following publication in the code or code supplement, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefore shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them. ~~Emergency rules shall have the force and effect of law.~~
3. Upon becoming effective, rules and regulations shall have the force and effect of law until amended or repealed by the agency or declared invalid by a final court decision.
- ~~3-~~ 4. The office of the legislative council may prescribe a format, style, and arrangement for rules and regulations which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules and regulations for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, and punctuation of the rules and regulations as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which shall be open to public inspection during office hours, ~~and shall provide copies of any rule upon the request of any person or agency. Unless otherwise provided by statute, the office of the legislative council may require the payment of the cost of providing such copies.~~

* SECTION 5. AMENDMENT. Section 28-32-03.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.1. ADMINISTRATIVE CODE AND CODE SUPPLEMENT.

1. The office of the legislative council shall ~~7-as-seen-as practicable--after--July--17--1977~~, compile, index, and publish all rules and ~~regulations~~ filed pursuant to this chapter in a publication which shall be known as the North Dakota Administrative Code, herein in this chapter referred to as the code. The code shall be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.
2. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, herein in this chapter referred to as the code supplement, each the month after the month that rules and ~~regulations~~ are submitted to the office of the legislative council for publication.
 - a. The code supplement shall contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules and ~~regulations~~ must be submitted by an agency for publication during any month.
 - b. The code supplement shall be printed or duplicated in the same style as the code ~~shall be set-up~~ so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
4. The code shall be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the office of the legislative council for the printing of as many copies of such separate portions of the code as it may require. The

* NOTE: Section 28-32-03.1 was also amended by section 1 of Senate Bill No. 2042, chapter 343.

cost of any such separate portions shall be paid by the agency.

* SECTION 6. AMENDMENT. Section 28-32-03.2 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.2. PRINTING, SALES, AND DISTRIBUTION OF CODE AND CODE SUPPLEMENT.

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:
 - a. Governor, one copy.
 - b. Attorney general, one copy.
 - c. Each supreme court judge, one copy.
 - d. Each district court judge, one copy.
 - e. Each county auditor of this state, for the use of county officials and the public, one copy.
 - f. Supreme court library, one copy.
 - g. State library, one copy.
 - h. Law library of the university of North Dakota, one copy.
 - i. Secretary of state, one copy.
 - j. North Dakota legislative council, two copies.
 - k. Each member of the legislative assembly, one copy, upon request.
2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, and the university of North Dakota law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.
3. The secretary of state shall make copies of and subscriptions to the code, revisions thereto, and the code supplement available to any person at prices fixed to cover publication and distribution costs.
4. The office of the legislative council shall determine the cost of supplying copies of the code, revisions thereto,

* NOTE: Subsections 1 and 2 of section 28-32-03.2 were also amended by section 1 of House Bill No. 1402, chapter 342.

and the code supplement. Such cost shall be the approximate cost of ~~printing--or--duplicating~~ publication and distributing distribution. However, a uniform price per page or group of pages may be established without regard to differences in the cost of ~~printing publishing~~ differing different parts of the code, revisions thereto, and the code supplement.

5. All fees collected by the secretary of state shall be deposited in the general fund of the state treasury.
6. The administrative code, revisions thereto, and the code supplement shall be considered sixth-class printing under sections 46-02-04 and 46-02-09.

SECTION 7. AMENDMENT. Section 28-32-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-04. PETITION FOR RECONSIDERATION OF RULE ~~OR-REGULATION~~ - HEARING BY AGENCY. Any person substantially interested in the effect of a rule ~~or--regulation--promulgated~~ adopted by an administrative agency may petition such agency for a reconsideration of any such rule ~~or--regulation~~ or for an amendment or ~~modification~~ repeal thereof. Such petition shall state clearly and concisely the petitioners' alleged grounds for such reconsideration, or for the proposed ~~modification~~ repeal or amendment of such rule ~~or regulation~~. The agency in its discretion may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

SECTION 8. AMENDMENT. Section 28-32-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-07. CONSIDERATION OF INFORMATION NOT PRESENTED AT A FORMAL HEARING. If an administrative agency ~~shall-desire~~ desires to avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by such agency, in addition to the evidence presented at any formal hearing, it may do so after first transmitting a copy of such information or evidence or an abstract thereof to each party of record in the proceeding, and after affording each such party, upon written request, an opportunity to examine such information or evidence and to present evidence in connection therewith and to cross-examine the person furnishing such information at a further public hearing to be called and held upon at least ten days' notice given by registered or certified mail. Nothing contained in this section ~~shall-prevent~~ prevents any administrative agency from taking notice of any fact or facts set forth in its duly ~~established~~ regulations adopted rules or any facts which are judicially noticed by the courts of this state.

Approved March 6, 1981

CHAPTER 342

HOUSE BILL NO. 1402
(Representative Wentz)
(Senator Nething)

ADMINISTRATIVE CODE DISTRIBUTION

AN ACT to amend and reenact subsections 1 and 2 of section 28-32-03.2 of the North Dakota Century Code, relating to distribution and maintenance of the North Dakota Administrative Code and code supplements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 28-32-03.2 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:
 - a. Governor, one copy.
 - b. Attorney general, one copy.
 - c. Each supreme court judge, one copy.
 - d. Each district court judge, one copy.
 - e. Each county auditor of this state, for the use of county officials and the public, one copy.
 - f. Supreme court library, one copy.
 - g. State library, one copy.
 - h. Law library of the university of North Dakota, one copy.
 - i. Each of the five depository libraries in this state, one copy, upon request.

* NOTE: Section 28-32-03.2 was also amended by section 6 of Senate Bill No. 2044, chapter 341.

- j. Secretary of state, one copy.
 - ~~j~~- k. North Dakota legislative council, two copies.
 - ~~k~~- l. Each member of the legislative assembly, one copy, upon request.
2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, and the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.

Approved March 11, 1981

CHAPTER 343

SENATE BILL NO. 2042
(Legislative Council)
(Interim Administrative Rules Committee)

RULE OBJECTION AUTHORITY

AN ACT to create and enact section 28-32-03.3 of the North Dakota Century Code, relating to the effect of an objection by the committee on administrative rules to a rule adopted by an administrative agency; and to amend and reenact sections 28-32-03.1 and 54-35-02.6 of the North Dakota Century Code, relating to the publication of the administrative code and administrative code supplement and the responsibility of the committee on administrative rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 28-32-03.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.1. ADMINISTRATIVE CODE AND CODE SUPPLEMENT.

1. The office of the legislative council shall, ~~as seen as practicable after July 1, 1977,~~ compile, index, and publish all rules and regulations filed pursuant to this chapter in a publication which shall be known as the North Dakota Administrative Code, ~~herein in this chapter~~ referred to as the code. The code shall also contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3. The code shall be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.
2. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~herein in this chapter~~ referred to as the code supplement, ~~each the month after the month that rules and regulations~~ are submitted to the office of the legislative council for publication.

* NOTE: Section 28-32-03.1 was also amended by section 5 of Senate Bill No. 2044, chapter 341.

- a. The code supplement shall contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules and ~~regulations~~ must be submitted by an agency for publication during any month.
 - b. The code supplement shall contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3.
 - c. The code supplement shall be printed or duplicated in the same style as the code ~~shall be set up~~ so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
 4. The code shall be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the office of the legislative council for the printing of as many copies of such separate portions of the code as it may require. The cost of any such separate portions shall be paid by the agency.

SECTION 2. Section 28-32-03.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

28-32-03.3. COMMITTEE ON ADMINISTRATIVE RULES - OBJECTION TO RULES - EFFECTS OF OBJECTION.

1. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

2. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and as soon as possible shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
3. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
4. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
5. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. These court costs shall include a reasonable attorney's fee and shall be payable from the appropriation of the agency which adopted the rule in question.

SECTION 3. AMENDMENT. Section 54-35-02.6 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-35-02.6. RULES REFERRED TO INTERIM COMMITTEE - COMMITTEE RESPONSIBILITY. The chairman of the legislative council may assign proposed and existing rules and regulations of administrative agencies, as defined by section 28-32-01, and written complaints received concerning such rules to the committee. The committee shall study and review assigned rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.
3. The court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative council for the amendment or repeal of enabling legislation serving as authority for rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code shall not prevent rules from taking effect, ~~nor shall~~. Except for objections pursuant to section 28-32-03.3, the recommendations or opinions of the committee shall not affect the legality of any rule as determined by the attorney general.

Approved March 6, 1981

CHAPTER 344

HOUSE BILL NO. 1384
(Representative Wentz)
(Senator H. Christensen)

INTERPRETER FOR DEAF PERSON

AN ACT to create and enact a new subsection to section 28-33-02 of the North Dakota Century Code, relating to when an interpreter is required for deaf persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 28-33-02 of the 1979 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Whenever any deaf person is a party to any proceedings involving, or is receiving any services from, any agency under the authority of the state or any political subdivision, the agency shall inform the deaf person of his right to a qualified interpreter to interpret or translate the action of any personnel providing such service and to assist the deaf person in communicating with each other person. The interpreter shall be appointed, at the expense of the agency, upon the request of the deaf person or the deaf person's parent or guardian, if the deaf person is a minor.

Approved March 26, 1981