HEALTH AND SAFETY

CHAPTER 247

HOUSE BILL NO. 1373
(Representatives Brodshaug, Dorso, Porter, Ring)
(Senator DeMers)

STATE HEALTH OFFICER

AN ACT to amend and reenact section 23-01-05 of the North Dakota Century Code, relating to the qualifications of the state health officer and the appointment of an advisory committee to the state health officer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05. Health officer - Qualifications, salary, term, duties - Advisory committee. The governor shall appoint the state health officer ~~must be appointed by the governor. He or she must be a physician who has graduated from a regular school of medicine of class A standing,~~ who must have had ~~special~~ post-graduate training or experience in public health administration~~, and who must be duly licensed or eligible for license to practice his profession in North Dakota. In the latter instance he shall obtain a license at the next examination of the state board of medical examiners or disqualify. He shall~~. The state health officer is entitled to receive a salary commensurate with ~~his~~ that person's training ~~or~~ and experience ~~in public health administration, such~~. The governor shall set the salary ~~to be fixed by the health council~~ of the state health officer within the limits of legislative appropriations to the department. ~~He also shall~~ The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business. ~~He~~ The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and ~~shall hold~~ holds office for a term of four years beginning ~~July 1, 1947~~ January 1, 1993. The state health officer is the administrative officer of the state department of health and consolidated laboratories. If the governor does not appoint as state health officer a physician licensed in this state, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor. The duties of the state health officer are as follows:

1. Enforce all rules and regulations as promulgated by the health council.
2. Hold the several boards of health responsible for the enforcement of state regulations, serve in an advisory capacity to the several boards of health

in the counties, cities, and townships of this state and provide for coordination of health activities.

3. Establish and enforce minimum standards of performance of the work of the local department of health.

4. Study health problems and plan for their solution as may be necessary.

5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.

6. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.

7. Collect and distribute health education material.

8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.

9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.

10. Comply with the state merit system policies of personnel administration.

11. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 248

SENATE BILL NO. 2050
(Legislative Council)
(Interim Waste Management Committee)

WASTE MANAGEMENT FACILITY INSPECTORS

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to employment of waste management facility inspectors by the state department of health and consolidated laboratories; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Department to employ waste management facility inspectors. The state department of health and consolidated laboratories shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23-29-10 and 23-29-11.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislature appropriation.

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

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 249

SENATE BILL NO. 2277
(Senator Lips)

VITAL RECORDS DISCLOSURES

AN ACT to amend and reenact section 23-02.1-27 of the North Dakota Century Code, relating to disclosure of certain vital records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-27. Disclosure of records.

~~1. To protect the integrity of vital records, to ensure their proper use, and to ensure efficient and proper administration of the system of vital records registration, it is unlawful for any person to permit inspection of or to disclose information contained in vital records, or to copy or issue a copy of all or part of any such record except as authorized by regulations.~~

~~2. The state department of health and consolidated laboratories may authorize the disclosure of data contained in vital records for research purposes.~~

~~3.~~ The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the person to whom the record relates if that person is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating ~~that a birth or fetal death occurred out of wedlock~~ cause of death may not be disclosed except ~~as provided by regulation~~ to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, or upon order of a court of competent jurisdiction.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 250

HOUSE BILL NO. 1229
(Representatives Soukup, Tollefson, Mahoney)

PRE-NEED FUNERAL CONTRACT PAYMENTS

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to the deposit or transfer of payments made on pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise must be deposited ~~within ten days~~ in or transferred to a trust company or to a federally insured bank, credit union, or savings and loan association~~, or trust company carrying federal deposit insurance and located within the~~ in this state ~~of North Dakota~~, within ten days. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. ~~Such~~ The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. ~~Such~~ The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making ~~such~~ the payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making ~~such~~ the payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record ~~thereof~~ of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as

belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within ~~the~~ this state ~~of North Dakota~~.

Any person who willfully violates this section or any rule or order of the commissioner ~~pursuant hereto~~ under this section is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense does not bar a prosecution or conviction for any other offense.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 251

SENATE BILL NO. 2394
(Senators DeMers, Lips, Mathern)
(Representatives Price, Rydell, Kerzman)

TERMINAL ILLNESS DECLARATIONS

AN ACT to create and enact a new section to chapter 23-06.4 of the North Dakota Century Code, relating to conditions for withdrawing, withholding, or administering nutrition or hydration; and to amend and reenact subsections 1 and 3 of section 23-06.4-03, subsection 2 of section 23-06.4-05, section 23-06.4-07, subsections 1 and 4 of section 23-06.4-11, and section 23-06.4-14 of the North Dakota Century Code, relating to declarations concerning life-prolonging treatment and management of qualified patients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-06.4-03 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment, nutrition, and hydration. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:

   a. Related to the declarant by blood or marriage;

   b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will, existing by operation of law or otherwise, at the time of the declaration;

   c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;

   d. Directly financially responsible for the declarant's medical care;

   e. Attending physicians of the declarant.

SECTION 2. AMENDMENT. Subsection 3 of section 23-06.4-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A declaration must be substantially in the following form ~~set forth in subdivision a or b, as applicable~~, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.

   ~~a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:~~

   ~~Declaration made this ___ day of _____ (month, year).~~

~~I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby~~ declare on (month, day, year):

~~1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.~~

~~2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.~~

a. I have made the following decision concerning life-prolonging treatment (initial 1, 2, or 3):

(1) [____] I direct that life-prolonging treatment be withheld or withdrawn and that I be permitted to die naturally if two physicians certify that:

(a) I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death;

(b) The application of life-prolonging treatment would serve only to artificially prolong the process of my dying; and

(c) I am not pregnant.

It is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and that they accept the consequences of that refusal, which is death.

(2) [____] I direct that life-prolonging treatment, which could extend my life, be used if two physicians certify that I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death. It is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct that medical or surgical treatment be provided.

(3) [____] I make no statement concerning life-prolonging treatment.

b. I have made the following decision concerning the administration of nutrition when my death is imminent (initial only one statement):

(1) [____] I wish to receive nutrition.

(2) [____] I wish to receive nutrition unless I cannot physically assimilate nutrition, nutrition would be physically harmful or would cause unreasonable physical pain, or nutrition would only prolong the process of my dying.

(3) [____] I do not wish to receive nutrition.

(4) [____] I make no statement concerning the administration of nutrition.

c. I have made the following decision concerning the administration of hydration when my death is imminent (initial only one statement):

(1) [____] I wish to receive hydration.

(2) [____] I wish to receive hydration unless I cannot physically assimilate hydration, hydration would be physically harmful or would cause unreasonable physical pain, or hydration would only prolong the process of my dying.

(3) [____] I do not wish to receive hydration.

(4) [____] I make no statement concerning the administration of hydration.

d. Concerning the administration of nutrition and hydration, I understand that if I make no statement about nutrition or hydration, my attending physician may withhold or withdraw nutrition or hydration if the physician determines that I cannot physically assimilate nutrition or hydration or that nutrition or hydration would be physically harmful or would cause unreasonable physical pain.

~~3.~~ e. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.

~~4.~~ f. I understand the ~~full import~~ importance of this declaration, I am voluntarily signing this declaration, I am at least eighteen years of age, and I am emotionally and mentally competent to make this declaration.

~~5.~~ g. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant ~~has been personally~~ is known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a

person directly financially responsible for the declarant's medical care.

Witness _____
Witness _____

~~b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:~~

~~Declaration made this _____ day of _____ (month, year).~~

~~I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:~~

~~1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.~~

~~2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.~~

~~3. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.~~

~~4. I understand that I may revoke this declaration at any time.~~

~~Signed _____~~

~~City, County, and State of Residence _____~~

~~The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.~~

~~Witness _____~~
~~Witness _____~~

SECTION 3. AMENDMENT. Subsection 2 of section 23-06.4-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A revocation is effective upon communication to the attending physician or other health care provider by the declarant ~~or a witness to the revocation~~.

SECTION 4. A new section to chapter 23-06.4 of the North Dakota Century Code is created and enacted as follows:

Nutrition or hydration - Conditions for withdrawing, withholding, or administering.

1. Nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to a person in a terminal condition in the absence of circumstances or directives described in this section. However, the administration of nutrition or hydration, or both, is presumed to be in the best interests of the patient and nutrition or hydration appropriately administered is not life-prolonging treatment.

2. Nutrition or hydration, or both, must be withdrawn, withheld, or administered if the patient for whom the administration of nutrition or hydration is considered has previously declared in writing the patient's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered.

3. In the absence of a written statement concerning nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the patient or would be physically harmful or would cause unreasonable physical pain to the patient.

SECTION 5. AMENDMENT. Section 23-06.4-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.4-07. Management of qualified patients.

1. A qualified patient may make decisions regarding life-prolonging treatment as long as the patient is competent.

2. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.

3. ~~This chapter does not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration. Nutrition and hydration may be withheld from a patient with a terminal condition if the nutrition and hydration could not be physically assimilated by the patient or would be physically harmful or unreasonably painful to the patient.~~

4. Notwithstanding a declaration executed under this chapter, medical treatment must be provided to a pregnant patient with a terminal condition unless, to a reasonable degree of medical certainty as certified on the patient's medical chart by the attending physician and an obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or will prolong severe pain that cannot be alleviated by medication.

SECTION 6. AMENDMENT. Subsections 1 and 4 of section 23-06.4-11 of the North Dakota Century Code are amended and reenacted as follows:

1. Death resulting from the withholding or withdrawal of life-prolonging treatment, nutrition, or hydration pursuant to a declaration and in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

4. This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-prolonging treatment, nutrition, or hydration in the event of a terminal condition.

SECTION 7. AMENDMENT. Section 23-06.4-14 of the North Dakota Century Code is amended and reenacted as follows:

23-06.4-14. Effect of previous declaration. An instrument executed before July 10, 1989, which basically complies with the intent of subsection 1 of section 23-06.4-03, must be given effect pursuant to this chapter. ~~A previously executed instrument that purports to comply with the intent of this chapter is valid for five years from July 10, 1989, unless the declarant becomes incompetent within five years after the execution of the declaration and remains incompetent at the time of the determination of a terminal condition under section 23-06.4-04, in which case the declaration continues in effect. When the declaration expires, a new declaration must be executed if the declarant wishes to make a written declaration under this chapter.~~

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 252

SENATE BILL NO. 2417
(Senators DeMers, Lips)
(Representatives Rydell, Kerzman, Price)

HEALTH CARE DURABLE POWER OF ATTORNEY

AN ACT to amend and reenact subsection 8 of section 23-06.5-02, subsection 5 of section 23-06.5-03, sections 23-06.5-07, 23-06.5-10, and 23-06.5-17 of the North Dakota Century Code, relating to durable powers of attorney for health care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 23-06.5-02 of the North Dakota Century Code is amended and reenacted as follows:

8. "Principal" means an adult who ~~is a resident of this state and who~~ has executed a durable power of attorney for health care.

SECTION 2. AMENDMENT. Subsection 5 of section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Nothing in this chapter permits an agent to consent to admission to a mental health facility~~,~~ or state institution~~, or security unit of a long-term care facility~~ for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

SECTION 3. AMENDMENT. Section 23-06.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-07. Revocation.

1. A durable power of attorney for health care is revoked:

   a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the power; or

   b. By execution by the principal of a subsequent durable power of attorney for health care~~; or~~

   ~~c. By the divorce of the principal and spouse, where the spouse is the principal's agent~~.

2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and notify the agent, the attending physician, and staff responsible for the principal's care of the revocation.

3. If the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

SECTION 4. AMENDMENT. Section 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a durable power of attorney for health care.

2. A durable power of attorney for health care is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the durable power of attorney for health care to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.

3. A durable power of attorney for health care is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the durable power of attorney for health care to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care.

SECTION 5. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. Statutory form of durable power of attorney. The statutory form of durable power of attorney is as follows:

STATUTORY FORM DURABLE POWER OF ATTORNEY FOR
HEALTH CARE
WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document ~~which~~ that is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen years of age ~~and a resident of the state of North Dakota~~ for this document to be legally valid and binding.

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision.

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known, does anything that is clearly contrary to your best interest.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents, if any, or give each of

them an executed copy of this document. You should give your doctor an executed copy of this document.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

_____

(insert your name and address)

do hereby designate and appoint: _____

_____

(insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of an operator of a long-term care facility.) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4~~, "Statement of Desires, Special Provisions, and Limitations",~~ below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

a. Statement of desires concerning life-prolonging care, treatment, services, and procedures:

_____

_____

_____

b. Additional statement of desires, special provisions, and limitations regarding health care decisions:

_____

_____

_____

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.

b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.

c. Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4~~, "Statement of Desires, Special Provisions, and Limitations",~~ above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".

b. Any necessary waiver or release from liability required by a hospital or physician.

7. DURATION. (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)

This durable power of attorney for health care expires on

_____

(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)

8. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

a. First Alternate Agent: _____

_____

(Insert name, address, and telephone number of first alternate agent.)

b. Second Alternate Agent: _____

_____

(Insert name, address, and telephone number of second alternate agent.)

9. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL
(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney For Health Care on _____ at _____ _____
(date) (city) (state)

_____
(you sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO ~~(2)~~ QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

This document must be witnessed by two ~~(2)~~ qualified adult witnesses. None of the following may be used as a witness:

1. A person you designate as your agent or alternate agent;
2. A health care provider;
3. An employee of a health care provider;
4. The operator of a long-term care facility;
5. An employee of an operator of a long-term care facility;
6. Your spouse;
7. A person related to you by blood or adoption;
8. A person entitled to inherit any part of your estate upon your death; or
9. A person who has, at the time of executing this document, any claim against your estate.

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider; an employee of a health care provider; the operator of a long-term care facility; an employee of an operator of a long-term care facility; the principal's spouse; a person related to the ~~spouse~~ principal by blood or adoption; a person entitled to inherit any part of the principal's estate upon death; nor a person who has, at the time of executing this document, any claim against the principal's estate.

Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____
Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____

10. ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapable. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent I must notify the principal of my decision. If I choose to withdraw when

the principal is incapable of making the principal's health care decisions, I must notify the principal's physician.

_____
(Signature of agent/date)

_____
(Signature of alternate agent/date)

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 253

SENATE BILL NO. 2180
(Education Committee)
(At the request of the Superintendent of Public Instruction)

INNOCULATION OF HOME-BASED STUDENTS

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to innoculation required before admission to school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-07-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. No child may be admitted to any public, private, or parochial school, or day care center, child care facility, headstart program, or nursery school operating in North Dakota or be supervised through home-based instruction unless such child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health and consolidated laboratories that such child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, and poliomyelitis. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the superintendent of public instruction.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 254

HOUSE BILL NO. 1383
(Representatives Svedjan, Rydell, Kerzman, Goffe)
(Senators Traynor, DeMers)

HIV TESTING

AN ACT to create and enact four new subsections to section 23-07.5-01 and six new subsections to section 23-07.5-02 of the North Dakota Century Code, relating to testing for the human immunodeficiency virus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Four new subsections to section 23-07.5-01 of the North Dakota Century Code are created and enacted as follows:

"Emergency medical services provider" means a firefighter, peace officer, or other person trained and authorized by law or rule to render emergency medical assistance or treatment.

"Personal physician" means the physician designated by a patient as the patient's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

"Significant exposure" means:

a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;

b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

c. Exposure that occurs by any other method of transmission defined by the state department of health and consolidated laboratories as a significant exposure.

"Universal precautions" means measures that a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1, takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in health care settings.

SECTION 2. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and

who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:

a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. The patient's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the patient is informed, while competent and conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the patient's consent, except to the individual who has had a significant exposure; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. A person who discloses the identity of a patient under this Act is guilty of a class C felony. Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the information and that disclosing the information constitutes a class C felony.

SECTION 3. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:

a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The provider is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the provider without the provider's consent, except to the patient who has had a significant exposure; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a class C felony. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that patient's understanding that the patient may not disclose the information and that disclosing the information constitutes a class C felony.

SECTION 4. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, testing for the presence of any contagious disease must be conducted.

SECTION 5. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

Any testing done pursuant to section 2, 3, or 4 of this Act may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of section 2 or subdivision b of section 3 of this Act, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;

b. The court finds clear and imminent danger to the public health or the health of the person petitioning for the testing and the person has demonstrated a compelling need for the test which cannot be accommodated by other means;

c. The petition substitutes a pseudonym for the true name of the person to be tested;

d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 6. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A person may request two tests after a significant exposure. The first test may be requested within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor later than six months, after a significant exposure. The tested person must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.

SECTION 7. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines that the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 255

SENATE BILL NO. 2285
(Senators Wogsland, DeMers, Freborg)
(Representatives Cleary, Rydell, Svedjan)

AIDS TESTING DEFENDANTS

AN ACT to provide for the medical testing of a sex offense defendant for sexually transmitted diseases and the human immunodeficiency virus; to create and enact a new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to disclosure of test results; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Court-ordered sexual offense medical testing. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile offender with respect to when a petition has been filed in a juvenile court alleging violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician. The physicians for the defendant or alleged juvenile offender and requesting victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

SECTION 2. Testing procedures - Results of test - Penalty.

1. If testing is ordered by a court under section 1 of this Act, only a health care provider, blood bank, blood center, or plasma center may obtain a specimen of bodily fluids or tissues for the purpose of testing.

2. The court shall order that the specimen be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, and

sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

3. Notwithstanding section 23-07.5-03, the laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health and consolidated laboratories.

4. Every copy of the test results must include the following disclaimer:

   The testing was conducted in a medically approved manner, but tests cannot determine exposure to or infection by acquired immunodeficiency syndrome or other sexually transmitted diseases with absolute accuracy. Anyone receiving this test result should continue to monitor their own health and should consult a physician as appropriate.

5. The court shall order all persons, other than the test subject, who receive test results pursuant to section 1 of this Act, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice. A person who intentionally discloses the results of any test in violation of this subsection and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

6. The specimens and the results of tests ordered pursuant to section 1 of this Act are not admissible evidence in any civil, criminal, or juvenile proceeding.

7. Any person who performs testing, transmits test results, or discloses information pursuant to this Act is immune from civil liability for any action undertaken in accordance with this Act, except for an act or omission that constitutes gross negligence.

8. The county in which the alleged violation of chapter 12.1-20 occurred shall pay for the testing. A defendant who is convicted of the offense shall reimburse the county for the costs of testing.

SECTION 3. A new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code is created and enacted as follows:

A person who receives test results under section 2 of this Act.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 256

HOUSE BILL NO. 1031
(Legislative Council)
(Interim Budget Committee on Long-Term Care)

BASIC CARE FACILITY ADMISSIONS

AN ACT to create and enact a new section to chapter 23-09.3 of the North Dakota Century Code, relating to admission of individuals to basic care facilities; and to amend and reenact section 23-09.3-01 of the North Dakota Century Code, relating to definitions concerning basic care facilites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-09.3-01. ~~Basic care facility -- Defined~~** Definitions. As used in this chapter~~, the term "basic~~:

1. "Basic care facility" means ~~any place~~ a residence, not licensed under chapter 23-16 by the department ~~of health and consolidated laboratories, hereinafter referred to as the department, under chapter 23-16, operated by any person, institution, organization, or private or public corporation, in which~~, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the ~~place, are received, kept, and provided with food, shelter, and care for hire or compensation. Care for hire or compensation to assist residents with functional impairments includes routine maintenance and supportive care with activities of daily living and instrumental activities of daily living which need not be provided in an institutional setting by trained and skilled medical personnel, can be administered without any possible harm to the health of the individual in care, and has no significant relationship to medical care of any type. Any place that assists its residents with walking, dressing, or toilet usage, or which promotes supervision of person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a basic care facility subject to regulation by the department~~ residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.

2. "Department" means the department of health and consolidated laboratories.

3. "Services" includes responsibility for resident health and safety, assistance with activities of daily living and instrumental activities of

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[1] NOTE: Section 23-09.3-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

daily living, provision of leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration.

SECTION 2. A new section to chapter 23-09.3 of the North Dakota Century Code is created and enacted as follows:

Admission of residents to basic care facility - Restrictions. A basic care facility may admit and retain only an individual for whom the facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual's highest practicable level of functioning. A basic care facility may admit or retain only an individual whose condition and abilities are consistent with the National Fire Protection Association 101 Life Safety Code requirements.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 257

SENATE BILL NO. 2457
(Senator Schoenwald)

HOUSING AUTHORITY COMMISSIONERS

AN ACT to amend and reenact section 23-11-05 of the North Dakota Century Code, relating to eligibility of housing authority commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-05 of the North Dakota Century Code is amended and reenacted as follows:

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation. When the governing body of a city adopts a resolution, declaring there is need for a housing authority, it 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 must 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 must be appointed for a term of office of five years except that all vacancies must 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~~ a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and such certificate is 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~~ the office and ~~he~~ is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his~~ those duties. The per diem compensation provided for in this section may not exceed three hundred dollars in any one fiscal year.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 258

HOUSE BILL NO. 1240
(Representatives Gorman, Hagle, Mahoney)
(Senators Freborg, Graba, Mushik)

HOUSING AUTHORITY CERTIFICATES AND VOUCHERS

AN ACT to create and enact a new subsection to section 23-11-11 of the North Dakota Century Code, relating to the powers of housing authorities; and to amend and reenact section 54-17-07.6 of the North Dakota Century Code, relating to the acceptance of grants, contributions, loans, and other aid by the state housing finance agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-11-11 of the North Dakota Century Code is created and enacted as follows:

To exercise within its area of operation the authority granted to the industrial commission under section 54-17-07.6.

SECTION 2. AMENDMENT. Section 54-17-07.6 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.6. Acceptance of grants, contributions, loans, or other aid. Acting in its capacity as a state housing finance agency, the industrial commission ~~is authorized to~~ may contract for, accept, and administer any grant, contribution, or loan of funds, property, or other aid in any form from the federal government or from any other source, and ~~to~~ may do all things necessary to qualify for any grant, contribution, or loan under any federal program, including those things necessary to qualify for assistance under the federal housing programs in effect from time to time. A housing authority established under chapter 23-11 which elects to exercise the authority granted to the industrial commission under this section preempts the industrial commission from acting with regard to housing certificates and vouchers within the area of operation of that housing authority. A local housing authority may elect to exercise the authority granted to the industrial commission under this section only within two years of the effective date of this Act. For transition of housing certificates and vouchers, a local housing authority that elects to exercise the authority granted to the industrial commission and that would administer three hundred or more units of certificates and vouchers administered by the industrial commission shall agree to accept a rate of seventy percent of the total contract administrative fees for the affected certificates and vouchers for two years of the effective date of this Act or until all local housing authorities in the state have entered into the administration of their certificates and vouchers, whichever is sooner. The remaining thirty percent of the fees remain with the industrial commission until that time to assure the provision of housing services to rural areas until local administration is implemented.

Approved April 2, 1993
Filed April 2, 1993

CHAPTER 259

HOUSE BILL NO. 1246
(Representatives Kretschmar, Wentz)

CHILD CARE FACILITY SMOKING BAN

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to prohibiting smoking in child care facilities; and to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to designation of smoking areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Designation of smoking areas. ~~Every place of public assembly is an area where smoking~~ Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas ~~must~~ may be designated ~~by the proprietor or other person with~~ only by proprietors of privately owned buildings or by public officials having general supervisory responsibility ~~over the place of public assembly, except~~ for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal~~, by other governing law, rule, or ordinance, or by corporate or private policy~~. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

SECTION 2. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in certain facilities. Smoking is not permitted in an early childhood facility at any time during which a child who receives early childhood services from that facility is present and receiving services at that facility.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 260

SENATE BILL NO. 2315
(Senators DeMers, Mushik, Lips)
(Representatives Kerzman, Price, Rydell)

HEALTH CARE INFORMED CONSENT

AN ACT to amend and reenact section 23-12-13 and subsection 2 of section 30.1-28-12 of the North Dakota Century Code, relating to persons authorized to provide informed consent to health care for incapacitated persons and the general powers of a guardian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-13 of the North Dakota Century Code is amended and reenacted as follows:

23-12-13. Persons authorized to provide informed consent to health care for incapacitated persons - Priority.

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority are authorized to provide informed consent to health care on behalf of the patient:

   a. The appointed guardian or custodian of the patient, if any;

   b. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

   c. The patient's spouse who has maintained significant contacts with the incapacitated person;

   d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;

   e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;

   f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;

   g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;

h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or

i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

2. A physician seeking informed consent for proposed health care for a minor patient or a patient who is an incapacitated person and is unable to consent must make reasonable efforts to locate and secure authorization for the health care from a competent person in the first or succeeding class identified in subsection 1. If the physician is unable to locate such person, authorization may be given by any person in the next class in the order of descending priority. A person identified in subsection 1 may not provide informed consent to health care if a person of higher priority has refused to give such authorization.

3. Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

4. No person authorized to provide informed consent pursuant to this section may provide consent for sterilization, abortion, or psychosurgery~~;~~ or for admission to a state mental health facility ~~or a secured unit of a long-term care facility~~ for a period of more than forty-five days without a mental health proceeding or other court order.

5. If a patient who is determined by a physician to be an incapacitated person, or a person interested in the patient's welfare, objects to a determination of incapacity made pursuant to this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.

SECTION 2. AMENDMENT. Subsection 2 of section 30.1-28-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility~~,~~ or state institution~~, or secured unit of a long-term care facility~~ for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subdivision, the guardian may readmit a ward to a mental health facility~~,~~ or a state institution~~, or secured unit of a long-term care facility~~ within sixty days of discharge from that institution, if the original admission to the facility~~,~~ or institution~~, or unit~~ had been authorized by the court.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 261

HOUSE BILL NO. 1027
(Legislative Council)
(Interim Budget Committee on Human Services)

ADA COMPLIANCE

AN ACT to provide for accessibility standards for buildings and facilities subject to the federal Americans with Disabilities Act of 1990 and to require notice of application of federal accessibility guidelines to construction projects; to amend and reenact section 23-13-04, subsection 9 of section 39-01-15, and section 48-02-19 of the North Dakota Century Code, relating to doors and parking spaces and compliance with Americans with Disabilities Act guidelines; and to repeal sections 23-13-12, 23-13-13, and 40-31-01.1 of the North Dakota Century Code, relating to toilet stalls, toilet rooms, and ramped curbing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-04 of the North Dakota Century Code is amended and reenacted as follows:

23-13-04. Doors of public buildings - Construction. All doors of ingress and egress in all schoolhouses and churches within the limits of any city and in all other buildings used for public assemblages of any character in this state, including theaters, public halls, city halls, courthouses, factories, hotels, and all other public buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose, must be so constructed as to conform with the requirements of the state building code as provided in chapter 54-21.3 and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36].

[1] **SECTION 2. AMENDMENT.** Subsection 9 of section 39-01-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must comply with the requirements of ~~American National Standards A117.1-1986~~ the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the

[1] NOTE: Section 39-01-15 was also amended by section 1 of Senate Bill No. 2130, chapter 376.

space is a nonmoving violation for which a fee of one hundred dollars must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.

SECTION 3. AMENDMENT. Section 48-02-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-19. Public buildings and facilities ~~to be usable by physically disabled - Access requirements~~ - Statement of compliance with accessibility guidelines. ~~All public buildings and facilities constructed, in whole or in part, from funds of the state or of its political subdivisions and buildings leased by state agencies, departments, or institutions must be accessible to, and usable by, the physically disabled in accordance with this section by July 1, 1981, with the following exceptions: (1) institutions under the supervision and control of the board of higher education must be constructed or remodeled so as to make all programs offered therein accessible as required in this section by July 1, 1996; and (2) areas, offices, or levels of public buildings not used for activities open to members of the general public. In meeting the requirements of this section, full consideration must be given to the uniform federal accessibility standards.~~ ~~Governing~~ State agencies and governing bodies of political subdivisions shall require a statement from ~~the~~ any person ~~or persons~~ preparing the plans and specifications for ~~the~~ a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with ~~this section~~ the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 4 of this Act. ~~Adequate space for the physically disabled to park automobiles near the facility without the necessity of crossing a street to reach the facility must be provided. All parking spaces reserved for use by motor vehicles operated by or for physically disabled persons must be designated by blue paint on the curb or edge of the paved portion of the parking space, as provided in section 39-01-15. All city curbs and crosswalks at principal intersections in the vicinity of public buildings must be made usable to persons in wheelchairs.~~

SECTION 4. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirements that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilties Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under

Public Law 101-336. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the office of intergovernmental assistance for recording.

SECTION 5. Notice of federal accessibility guidelines required. A building permit issued under section 11-33-18, subsection 6 of section 40-05-02, or other similar grant of authority must contain the following statement:

> Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

SECTION 6. REPEAL. Sections 23-13-12, 23-13-13, and 40-31-01.1 of the North Dakota Century Code are repealed.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 262

SENATE BILL NO. 2164
(Human Services Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

STATE HOSPITAL LICENSURE

AN ACT to amend and reenact section 23-16-01 of the North Dakota Century Code, relating to licensure requirements for the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-16-01. Licensure of medical hospitals and state hospitals.** After July 1, 1947, no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours may be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Chiropractic hospitals, sanatoriums, and hospitals such as those for unmarried mothers maintained and operated by the department of human services are not required to obtain a license under this chapter. ~~In the case of hospitals maintained and operated by the state, the state department of health and consolidated laboratories has the responsibility of inspecting, rendering consultation service, and making recommendations on phases of hospital administration covered in the standards promulgated by the health council. The state hospital located at Jamestown may also obtain an annual license from the state department of health and consolidated laboratories as provided for in sections 23-16-02 and 23-16-03.~~

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office, the state department of health and consolidated laboratories has the right of inspection, but no license may be required under the provisions of this chapter when the number of such beds does not exceed four.

Approved March 16, 1993
Filed March 16, 1993

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[1] NOTE: Section 23-16-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 263

SENATE BILL NO. 2295
(Senators Nalewaja, Lindaas, Solberg)
(Representatives Mahoney, Rydell, Svedjan)

HEALTH CARE PROVIDER COOPERATIVE AGREEMENTS

AN ACT relating to cooperative agreements between health care providers; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Cooperative agreement" means an agreement among two or more health care providers or third-party payers for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by health care providers.
2. "Department" means the department of health and consolidated laboratories.
3. "Health care facility" means a facility licensed in this state as a hospital, nursing home, community-based residential care facility, mental health center, or sanatorium.
4. "Health care provider" means any person licensed, registered, permitted, or certified by the department of health and consolidated laboratories to provide health care services in this state.
5. "Third-party payer" means any insurer or other entity responsible for providing payment for health care services, including the workers compensation bureau, the comprehensive health association of North Dakota, and any self-insured entity.

SECTION 2. Application for cooperative agreements - Departmental review. A health care provider may negotiate a cooperative agreement with another health care provider or third-party payer if the likely benefits resulting from the agreement outweigh the disadvantages attributable to a reduction in competition that may result from the agreement. The parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the agreement. The application must include an executed copy of the cooperative agreement and must describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. The applicants shall file a copy of the application and related materials with the attorney general and the department. The department shall review the application and shall hold a public hearing on the application. The department shall grant or deny the application within ninety days of the date of filing of the application. The decision must be in writing and must set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor. Directors, trustees, or their representatives of a health care provider

or third-party payer who participate in the discussion or negotiation are immune from civil actions or criminal prosecution for a violation of state or federal antitrust laws, unless the discussion or negotiation exceeds the scope authorized in this section.

SECTION 3. Standards for certification. The department shall issue a certificate of public advantage for cooperative agreement if the department determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits to health care consumers resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The department shall consult with the attorney general regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

1. In evaluating the potential benefits of a cooperative agreement to health care consumers, the department shall consider whether any of the following benefits may result from the cooperative agreement:

   a. Enhancement of the quality of health care services provided to residents of this state;

   b. Preservation of health care facilities in geographical proximity to the communities traditionally served by those facilities;

   c. Gains in the cost efficiency of services provided by the parties involved;

   d. Improvements in the utilization of health care resources and equipment; and

   e. Avoidance of duplication of health care resources.

2. The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include the following factors:

   a. The extent of any likely adverse impact on the bargaining power of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payers in negotiating payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

   b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or persons furnishing goods or services to or in competition with providers or third-party payers that is likely to result directly or indirectly from the cooperative agreement;

   c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

   d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits to health care consumers over disadvantages attributable to any reduction in competition likely to result from the agreement.

SECTION 4. Certificate termination. The department may, after notice and hearing, terminate a certificate of public advantage if the department determines that:

1. The likely or actual benefits to health care consumers that result from a certified agreement no longer outweigh the disadvantages attributable to a potential reduction in competition resulting from the agreement; or

2. Performance by the parties under the certified agreement does not conform to the representations made by the parties in the application or to the provisions of any conditions attached to the certificate of public advantage by the department at the time the application was granted.

SECTION 5. Records. The department shall maintain all cooperative agreements for which the certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

SECTION 6. Investigation by attorney general. The attorney general, at any time after an application is filed under section 2 of this Act, may require by subpoena the attendance and testimony of witnesses and the production of documents in the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 3 of this Act. The attorney general may seek an order from the district court compelling compliance with a subpoena issued under this section.

SECTION 7. Cooperative agreement enjoined - Automatic stay - Standards for adjudication. The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate, but the action must be brought no later than forty days following the department's approval of an application for certificate of public advantage. Upon the filing of the complaint, the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case. In any action, the applicants for a certificate bear the burden of establishing by clear and convincing evidence that the likely benefits to health care consumers which result from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The court shall review whether the agreement constitutes an unreasonable restraint of trade under state or federal law in assessing disadvantages attributable to a reduction in competition likely to result from the agreement.

SECTION 8. Cancellation of a certificate of public advantage. If, at any time following the forty-day period specified in section 7 of this Act, the attorney general determines that, as a result of changed circumstances, the benefits to health care consumers which result from a certified agreement no longer outweigh the disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in district court seeking to cancel the certificate of public advantage. In an action brought under this section, the attorney general has the burden of establishing by a preponderance of the evidence

that, as a result of changed circumstances, the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. If the attorney general first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

SECTION 9. Resolution by consent decree - Attorney fees. The district court may resolve any action brought by the attorney general under section 7 or 8 of this Act by entering an order that, with the consent of the parties, modifies the cooperative agreement. Upon the entry of the order, the parties to the cooperative agreement have the protection specified in section 10 of this Act and the cooperative agreement has the effectiveness specified in section 10 of this Act. If the attorney general prevails in an action under section 6, 7, or 8 of this Act, the attorney general is entitled to an award of the reasonable costs of the investigation or litigation and reasonable attorney fees, expert witness fees, and court costs incurred in litigation.

SECTION 10. Effective certification - Validity - Application. A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating a cooperative agreement is lawful conduct. This section does not immunize any person for conduct in negotiating a cooperative agreement for which an application for a certificate of public advantage is not filed. If the department or the district court determines that the applicants have not established by clear and convincing evidence that the likely benefits to health care consumers which result from a cooperative agreement outweigh any disadvantage attributable to a potential reduction in competition resulting from the agreement, the agreement is invalid and has no force or effect. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. This Act does not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals. Notwithstanding any provisions to the contrary, any improvements, construction, expansion, or acquisition of health care equipment or services approved as a condition of a cooperative agreement is not subject to laws governing certificate of need.

SECTION 11. Assessment - Health care cooperative agreement fund. The department shall establish an assessment to be paid by each party to a cooperative agreement. The aggregate amount of the assessment for a cooperative agreement may not exceed forty thousand dollars. The parties shall pay the assessment to the department when the application for the cooperative agreement is submitted to the department. The department shall deposit the moneys received under this section in the health care cooperative agreement fund of the state treasury.

SECTION 12. APPROPRIATION. There is hereby appropriated out of any moneys in the health care cooperative agreement fund, not otherwise appropriated, such amounts

as may be necessary to the department of health and consolidated laboratories for administering the cooperative agreements between health care providers and for reimbursement to the attorney general for expenses incurred for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 264

SENATE BILL NO. 2346
(Senators Mathern, Scherber)
(Representatives Porter, Ring)

WASTE MANAGEMENT PERMIT APPLICATIONS

AN ACT to create and enact a new section to chapter 23-20.3 and a new section to chapter 23-29 of the North Dakota Century Code, relating to the disclosure of certain violations of the law by applicants for waste management facility permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.3 of the North Dakota Century Code is created and enacted as follows:

Disclosure of information before issuance, renewal, transfer, or major modification of permit. Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws

of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

SECTION 2. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Disclosure of information before issuance, renewal, transfer, or major modification of permit. Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of solid waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

Approved March 11, 1993
Filed March 11, 1993

CHAPTER 265

HOUSE BILL NO. 1116
(Human Services Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

POLLUTION RULES AND ASBESTOS ABATEMENT

AN ACT to create and enact a new subsection to section 23-25-03 of the North Dakota Century Code, relating to air pollution prevention rules; and to amend and reenact subsection 7 of section 23-25-01 and section 23-25-03.1 of the North Dakota Century Code, relating to asbestos workers and licensing of asbestos contractors and certification of asbestos workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 7 of section 23-25-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Asbestos worker" means ~~an employee or agent of an asbestos contractor, or a public employee~~ any person engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.

SECTION 2. A new subsection to section 23-25-03 of the North Dakota Century Code is created and enacted as follows:

Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The department shall develop and implement such federal programs if the department determines there is a benefit to the state.

SECTION 3. AMENDMENT. Section 23-25-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-25-03.1. Licensing of asbestos contractors~~,~~ and certification of ~~their~~ asbestos workers~~, and certification of public employees engaged in asbestos abatement~~. The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors, and a certification program

[1] NOTE: Section 23-25-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

for ~~their~~ asbestos workers ~~and for public employees engaged in asbestos abatement,~~ and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers ~~and public employees performing asbestos abatement~~.

2. To establish standards and procedures for the licensing of contractors, and the certification of ~~their~~ asbestos workers ~~and of public employees,~~ engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act ~~[42 U.S.C. 1868]~~, as amended.

3. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.

4. To establish an annual fee and renewal fees for licensing asbestos contractors and certifying ~~their~~ asbestos workers and to establish examination fees for asbestos workers ~~and public employees engaged in asbestos abatement~~ under section 23-25-04.2.

5. To establish indoor environmental nonoccupational air quality standards for asbestos.

6. To adopt and enforce rules as necessary for the implementation of this section.

~~The requirements of this section apply only to asbestos abatement conducted in buildings including, but not limited to, schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act.~~ For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the Federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the Federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 266

SENATE BILL NO. 2160
(Natural Resources Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

STATEWIDE COORDINATING COMMITTEE DUTIES

AN ACT to amend and reenact section 23-29-06.4 of the North Dakota Century Code, relating to the statewide coordinating committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-06.4 of the North Dakota Century Code is amended and reenacted as follows:

23-29-06.4. Statewide coordinating committee. The chairman of the governing board of each solid waste management district shall select a representative to serve on a statewide solid waste management coordinating committee. A representative of the department, the state engineer, and the state geologist shall also serve on the committee. The coordinating committee shall ~~assist the districts in managing and regulating solid waste and shall coordinate efforts of the districts with state agencies. In addition, the coordinating committee shall review alternative means of managing solid waste including a review of forms of public ownership and financial assurance mechanisms for waste management facilities. A report of the review must be provided to the legislative assembly and the governor by January 1, 1993~~ coordinate solid waste management between the districts and the state agencies and coordinate development, implementation, and revision of district solid waste management plans and the state plan to resolve conflict, achieve consistency, and assure adequate and appropriate solid waste management capacity.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 267

HOUSE BILL NO. 1445
(Representatives Gulleson, Ness, Ring)
(Senator Kelsh)

SOLID WASTE MANAGEMENT FACILITY PERMITS

AN ACT to amend and reenact section 23-29-07 of the North Dakota Century Code, relating to solid waste management facility permit conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07. Permits.** The department ~~is hereby authorized to~~ may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All ~~such~~ permits are nontransferable and are for a term of not more than five years from the date of issuance. All ~~such~~ permits ~~so issued~~ are conditioned upon the observance of the laws of the state and the rules ~~and regulations~~ authorized herein.

Approved April 2, 1993
Filed April 2, 1993

[1] NOTE: Section 23-29-07 was also amended by section 6 of House Bill No. 1057, chapter 111, and by section 15 of House Bill No. 1005, chapter 5.

CHAPTER 268

SENATE BILL NO. 2386
(Senators Graba, B. Stenehjem)
(Representative Glassheim)

SOLID WASTE SURCHARGE REPORTS

AN ACT to amend and reenact section 23-29-07.4 of the North Dakota Century Code, relating to collection of the solid waste management surcharge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07.4 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07.4. Report of surcharge collection.** No later than thirty days after the conclusion of each quarter, each person or political subdivision operating a service for collection of municipal waste shall send to the state tax commissioner a correct report of the surcharge collected for the previous quarter as required under section 23-29-07.3. The provisions of chapter 57-39.2 relating to the administration of the sales tax, except the provisions relating to refunds and credits and any provision in conflict with sections 23-29-07.2 through 23-29-07.5, govern the administration of the surcharge imposed under section 23-29-07.3. If a surcharge is assessed, but not collected during the quarter in which the surcharge was assessed, the person or political subdivision responsible for collecting and reporting the surcharge is not required to report the surcharge to the tax commissioner until the end of the quarter in which the surcharge is actually collected. A surcharge that has been collected, but which is not due, must be used to offset any surcharge to be imposed against the person from whom the surcharge was originally collected. A dispute relating to the imposition of the surcharge may be appealed to the department for a final decision. The department's decision may not be appealed under chapter 28-32.

Approved March 10, 1993
Filed March 10, 1993

[1] NOTE: Section 23-29-07.4 was also amended by section 1 of Senate Bill No. 2293, chapter 269.

CHAPTER 269

SENATE BILL NO. 2293
(Senator Dotzenrod)

TAX ADMINISTRATION CHANGES

AN ACT to amend and reenact sections 23-29-07.4, 57-38-09.1, subsection 5 of section 57-38-30.3, sections 57-38-60, 57-38-61, subsections 1, 2, 5, and 8 of section 57-38.4-01, and subsection 1 of section 57-38.4-02 of the North Dakota Century Code, relating to reporting requirements for collection of the solid waste management surcharge, filing requirements for tax-exempt organizations, the definition of federal income tax liability for the simplified optional method of computing tax, the filing requirements for income withholding returns and wage information returns, penalties for failure to file wage information returns, federalizing the due date for employers' annual returns, applying the provisions for failing to complete returns or supply information to income withholding tax, definitions for water's edge elections, and requirements for using the water's edge method; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07.4 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07.4. Report of surcharge collection.** No later than thirty days after the conclusion of each quarter, each person or political subdivision operating a service for collection of municipal waste shall send to the state tax commissioner a correct report of the surcharge collected for the previous quarter as required under section 23-29-07.3. The provisions of chapter 57-39.2 relating to the administration of the sales tax~~, except the provisions relating to refunds and credits and any provision in conflict with sections 23-29-07.2 through 23-29-07.5,~~ govern the administration of the surcharge imposed under section 23-29-07.3. A surcharge that has been collected, but which is not due, must be used to offset any surcharge to be imposed against the person from whom the surcharge was originally collected. A dispute relating to the imposition of the surcharge may be appealed to the department for a final decision. The department's decision may not be appealed under chapter 28-32.

SECTION 2. AMENDMENT. Section 57-38-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-09.1. Organizations exempt from income tax - File return. Any organization exempt from taxation pursuant to section 57-38-09 must ~~file a return with~~ provide the tax commissioner, in such form and manner as may be prescribed by the tax commissioner ~~containing such~~, information as is necessary to enable ~~him~~ the

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[1] NOTE: Section 23-29-07.4 was also amended by section 1 of Senate Bill No. 2386, chapter 268.

tax commissioner to determine the exempt status of the organization. ~~Returns made on the basis of the calendar year shall be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fifth month following the close of the fiscal year. The return shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made shall contain or be verified by a written declaration that it is made under the penalties of perjury.~~

SECTION 3. AMENDMENT. Subsection 5 of section 57-38-30.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables, tax rate schedules, or form 8615, plus additional taxes due on federal income tax schedules or forms 4970, 4972, section 72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum tax (form 8801), and before credit for the elderly or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), general business credit (form 3800), jobs credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low-income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit for federal tax on gasoline and special fuels (form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656.

SECTION 4. AMENDMENT. Section 57-38-60 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59; provided, that the tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which shall show the total amount of wages paid to employees, the

amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

3. Every employer required to withhold state income tax shall make an annual return to the tax commissioner on forms provided and approved by the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld~~, for each employee~~ during the calendar year ~~and shall file the same with the tax commissioner on or before the thirty first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such rules as may be prescribed by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with section 57-38-59, and said statement shall be made available to the employee on or before the thirty first day of January of the year following that for which the report is made~~. The annual return must be accompanied by a statement of the compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld for each employee. The annual return and accompanying statements must be filed with the tax commissioner on or before the due date for filing similar returns with the internal revenue service.

4. Every employer not required to withhold state income tax shall provide to the tax commissioner a statement of the compensation paid, and the federal income tax deducted and withheld for each employee. The statement must be filed on or before the due date for filing similar returns with the internal revenue service.

5. In case of failure to timely file an information statement as required by subsections 3 and 4, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars.

6. Every employer shall also, in accordance with rules adopted by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for the employee during the preceding calendar year in accordance with section 57-38-59. The statement must be made available to the employee on or before January thirty-first of the year following that for which the report is made.

7. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts the employer is considered the taxpayer.

~~5.~~ 8. Every employer who deducts and withholds any amounts under section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

~~6.~~ 9. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.

~~7.~~ 10. An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].

SECTION 5. AMENDMENT. Section 57-38-61 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-33, 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

SECTION 6. AMENDMENT. Subsections 1, 2, 5, and 8 of section 57-38.4-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the water's edge ~~combined~~ group.

2. "Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge ~~corporate~~ group.

5. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has ~~less than~~ twenty percent or less of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

8. "Water's edge group" includes the following entities:

   a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

   b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.

   c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.

   d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.

   e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by ~~the taxpayer~~ an affiliated corporation and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.

SECTION 7. AMENDMENT. Subsection 1 of section 57-38.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation electing to file using the water's edge method must comply with the following:

   a. The election must be made on the return as originally and timely filed.

b. The corporation may not reduce taxable income for federal taxes ~~paid or accrued as allowed by~~ deducted under subdivision c of subsection 1 of section 57-38-01.3.

c. The water's edge election is binding for five consecutive taxable years after making the election.

d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

SECTION 9. EMERGENCY. Section 1 of this Act is declared to be an emergency measure.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 270

SENATE BILL NO. 2214
(Natural Resources Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

MUNICIPAL WASTE LANDFILL RELEASE COMPENSATION

AN ACT to provide for cleanup of leaking municipal waste landfills through the establishment of a municipal waste landfill release compensation fund; to provide a penalty; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. The purpose of this Act is to establish:

1. A municipal waste landfill release compensation fund; and

2. The eligibility requirements for participation in the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment or that a contractor has expended time and materials.

2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term includes the repair of the closure of a municipal waste landfill on which such action occurs.

3. "Department" means the state department of health and consolidated laboratories.

4. "Fund" means the municipal waste landfill release compensation fund.

5. "Operator" means any person in control of, or having responsibility for, the daily operation of a municipal waste landfill under this Act.

6. "Owner" means any person who holds title to, controls, or possesses an interest in the municipal waste landfill before or after the discontinuation of its use.

7. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state municipality, commission, political subdivision, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.

8. "Release" means any unintentional leaking, emitting, discharging, or escaping of leachate from a municipal waste landfill into the environment occurring after the effective date of this Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

SECTION 3. Administration of fund. The department shall administer the fund according to this Act. The department may employ any assistance and staff to administer the fund within the limits of legislative appropriation.

SECTION 4. Adoption of rules. The department shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 5. Release discovery. An owner or operator shall notify the department if it has reason to believe that a release has occurred. The department may require corrective action as provided by subsection 10 of section 23-29-04.

SECTION 6. Owner or operator not identified. The department may initiate legal action to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with section 5 of this Act, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 7. Imminent hazard. Upon receipt of information that a release has occurred which may present an imminent or substantial endangerment of public health or environmental resources, the department may take such emergency action as it determines necessary to protect the public health or the environmental resources.

SECTION 8. Duty to take action. Nothing in this Act limits any person's duty to take action related to a release. However, payment for corrective actions required as a result of a release is governed by this Act. Nothing in this Act limits remediation activities taken or directed by any state or federal agency under other environmental statutues.

SECTION 9. Providing of information. Any person whom the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning wastes placed into a municipal waste landfill, or any person who may have information concerning a release, if requested by the department, must furnish to the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 10. Examination of records. Any employee of the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data which may be related to a release of any person who has a duty to provide information to the department under section 9 of this Act; and

2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any

person who has a duty to provide the information under section 9 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 11. Responsibility for cost. The owner or operator is liable for the cost of corrective action required by the department, including the cost of investigating the releases, and for legal actions of the department regarding the release. This Act does not create any new cause of action for damages on behalf of third parties against the fund.

SECTION 12. Liability avoided. No owner or operator may avoid liability under this chapter or other state environmental law by means of a conveyance of any right, title, or interest in real property or by an indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;

2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

3. Bar a cause of action by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 13. Other remedies. Nothing in this Act limits the powers of the department, or precludes the pursuit of any administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 14. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any premium fee collected under section 16 of this Act;

2. Any money recovered by the fund under section 21 of this Act, and any money paid under an agreement, stipulation, or settlement;

3. Any interest attributable to investment of money in the fund; and

4. Any money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. Eligibility.

1. Any owner or operator of an active disposal unit which continues disposal of municipal waste after October 9, 1993, at a municipal waste landfill site, or of a new disposal unit subsequently allowed by permit, as provided by chapter 23-29, shall participate in the fund for that unit provided:

   a. The disposal unit is designed, constructed, operated, and closed to comply with federal and state statutes and adopted rules in effect as of October 9, 1993;

b. The owner or operator has notified the board of the local solid waste management district and the board has acknowledged and approved the municipal waste landfill site to comply with chapter 23-29; and

c. The owner or operator pays the annual premium fee under section 16 of this Act during the duration of operation of the landfill site, except as provided by section 23 of this Act.

2. An owner or operator who does not comply with this section or with section 16 of this Act is ineligible for reimbursement of claims for corrective action.

SECTION 16. Premium fee.

1. Any owner or operator of a municipal waste landfill site who is eligible and participates in the fund shall:

a. Notify the department, on forms to be made available by the department, of its intent to participate in the fund by February 1, 1994, for active disposal units at landfill sites or at the time of application for permit, as provided by chapter 23-29, for new disposal units, whichever date is later;

b. Demonstrate that the disposal unit and the landfill site comply with applicable laws and rules; and

c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at the landfill site during the premium fee period.

2. The premium fee is payable annually by January thirtieth for a premium fee period corresponding to the previous calendar year, with the first period inclusive of the nine months ending December 31, 1994.

3. The premium fees collected under this section must be paid to the department for deposit in the state treasury for credit to the fund.

SECTION 17. Reimbursement for corrective action. The department shall reimburse an eligible owner or operator, as provided by section 15 of this Act, for the costs of corrective action, including the investigation, which are greater than one hundred thousand dollars. A reimbursement may not be made unless the department determines that:

1. At the time the release was discovered the owner or operator and the landfill site were in compliance with applicable federal and state statutes and adopted rules, including rules relating to financial responsibility;

2. The department was given notice of the release as required by this Act and other applicable federal and state statutes;

3. The release occurred from the active disposal unit or a new disposal unit pursuant to section 15 of this Act;

4. The owner or operator has paid the first one hundred thousand dollars of cost of corrective action; and

5. The owner or operator, to the extent possible, fully cooperated with the department in responding to the release.

SECTION 18. Application for reimbursement. Any eligible owner or operator who has undertaken corrective action in response to a release, the time of release being unknown, may apply to the department for partial or full reimbursement under sections 4 and 17 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after April 1, 1994.

SECTION 19. Department to determine costs. A reimbursement may not be made from the fund until the department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. A reimbursement may be made to only one person for a release.

SECTION 20. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs as a result of a release.

SECTION 21. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund as provided by sections 6, 7, 10, and 11 of this Act in taking corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the department against the owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 22. Coordination of benefits. If an eligible owner operator has financial assurance that provides coverage for corrective action, the department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of all financial assurance on the same basis.

SECTION 23. Fund ceiling. When the fund balance exceeds fifteen million dollars, the department shall suspend collection of the premium fee. When the fund balance becomes less than five million dollars through appropriations authorized by this Act, the department shall resume collection of the fee.

SECTION 24. Fund appropriation. Money in the fund is appropriated to the department as a standing and continuing appropriation for the purposes of this Act.

SECTION 25. APPROPRIATION. There is hereby appropriated out of any moneys in the fund in the state treasury generated from the premium fees collected under section 16 of this Act, not otherwise appropriated, the sum of $25,000, or so much of the sum as may be necessary to the state department of health and consolidated laboratories for the purpose of administering the municipal waste landfill release compensation fund for the period beginning with the effective date of this Act and ending June 30, 1995.

Approved April 12, 1993
Filed April 12, 1993